In the High Court of Judicature at Madras
Dated: 12.10..2007
Coram:
The Honourable Mr.Justice V.Dhanapalan
W.P.Nos.27258, 28827 and 28485 of 2007
and
M.P.Nos.1 and 2 of 2007 in 28827 of 2007
& M.P.No.1 of 2007 in W.P.No.27258 of 2007
& M.P.Nos.1 to 4 of 2007 in W.P.No.28485 of 2007

M/s.Garware-Wall Ropes Ltd.,
Rep. by its Deputy Manager-Fisheries-South,
Plot No.11, Block D.1,
M.I.D.C., Chinchwad,
Pune, Maharashtra. Petitioner in W.P.No.28827 of 2007
vs.
1. The State of Tamil Nadu
Rep. by Secretary to Government,
Department of Fisheries,
Fort St.George, Chennai-600 009.

2. Special Commissioner of Fisheries,
Teynampet, Chennai-600 006.

3. Director of Fisheries,
Teynampet, Chennai-600 006 Respondents in W.P.No.28827 of 2007

M/s.Kassim Nets,
Rep. by its Managing Partner
Mr.K.Mohamed Basheer,
Thammathu Konam,
Erumbukkadu Post,
Nagercoil-629 004,
Kanyakumari District. Petitioner in both the WPs
vs.

1. The Secretary to Government,
Department of Animal Husbandry,
Dairying and Fisheries,
Fort St.George, Chennai-600 009.

2. The Director of Fisheries,
Administrative Office Building,
Teynampet, Chennai-600 006 Respondents 1 and 2 in W.P.No.27258/2007
and respondents 1 and 3
in W.P.No.28485 of 2007

2. The Special Commissioner of Fisheries,
Government of Tamil Nadu,
Administrative Office Building,

Teynampet, Chennai-600 006. Respondent No.2 in W.P.No.28485 of 2007

For petitioner in
W.P.No.28827 of 2007 Mr.R.Muthukumarasamy, Senior Counsel for M/s.R.Suresh Kumar
For petitioner in
W.P.Nos.27258 and 28485 of 2007 Mr.AL.Somayaji, Senior Counsel for M/s.V.Perumal

For respondents Mr.R.Viduthalai, Adv. General,
assisted by
Mr.A.Edwin Prabhakar,Addl.G.P.

Writ Petition No.28827 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, as stated therein.

Writ Petition No.27258 of 2007 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, as stated therein.

Writ Petition No.28485 of 2007 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, as stated therein.
ORDER
The prayer in Writ Petition No.28827 of 2007 filed by M/s.Garware-Wall Ropes Ltd. is for issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with Re-Tender Notification issued by the respondents dated 21.8.2007 and earlier Tender Notification dated 25.4.2007 and quash the Notification dated 21.8.2007 and consequently direct the respondents to pursue the Tender Notification dated 25.4.2007 in the matter of manufacture and supply of webbings to fishermen affected by Tsunami.
2. According to the petitioner in W.P.No.28827 of 2007, it is a Company registered under the Companies Act, engaged inter-alia in the manufacture and supply of synthetic ropes, twines, yarn, nettings/webbings (including fishing nets), woven fabric and geo-synthetic products. It is a Company which is the third largest manufacturer of synthetic cordage in the world and the largest in India. It has been awarded the Star Export House status by the Ministry of Commerce, Government of India, besides ISO:9001:2000 accreditation. They have not only a strong domestic performance, but are predominant in the field of export market also. The petitioner-Company is specialised in providing application-based specials for fishing, shipping and oil exportation industries. The petitioner has a very big factory with more than 110 machines, which can be put to use for the manufacture and supply of webbings for bulk quantities.
3. The respondents herein have issued a Tender Notification on 21.12.2006 inviting tenders from manufacturers of webbings, who have a capacity of 1250 Metric Tonnes (for short, Metric Tonnes as "MT") of supply to supply 1100 MT of webbings, as per the specification and the terms and conditions referred to in the Tender Notification. In terms of the specifications mentioned in Tender Notification, the successful tenderers were required to supply 1100 MT knotted nylon webbings to the fishermen of the Tamil Nadu. The tenderers were required to pay an EMD of Rs.44 lakhs.

4. The petitioner being a major company, having annual production capacity of more than 1250 MT, submitted their tenders with all the relevant documents and proofs on 4.1.2007. In terms of the tender conditions, the tenders were opened on 8.1.2007. All the tenders submitted before the prescribed time, were verified so as to examine whether they were qualified on technical grounds. The petitioners have all their qualifications and it is understood that the bids were found technically qualified. Thereafter on 7.2.2007, a Committee constituted by the Director of Fisheries, inspected the petitioner's factory so as to ascertain the availability of infrastructural facilities and machineries

and also to verify the manufacturing capacity of the petitioner-Company (hereinafter referred to as 'the Company'). The Committee comprised of an official of the Fisheries Survey of India (Government of India) and two State Government officials. On inspection, the Committee was fully satisfied with the manufacturing capacity and the infrastructure of the Company, for the required supply of webbings. Thereafter, on 10.4.2007, the price bids of the Company were opened. According to them, the petitioner-Company was the only Company which was technically qualified. After opening the price bids, the Company was called for negotiations and there were four rounds of negotiations and in which, the price quoted was reduced by the petitioner-Company to some extent. While that being the position, on 13.4.2007, the Tender Awarding Committee rejected the tenders on the ground that there does not exist Bureau of Indian Standards (hereinafter referred to as 'the BIS') for webbings, a condition stipulated in the tender. It is the case of the Company that in this context, while submitting the bid by the petitioner, they had pointed out/clarified on this that the nylon multi filament nettings will be made from the twine conforming to IS-4401. However since there is no BIS Standard for nylon mono filament yarn and nylon mono filament webbings as well as nylon multi filament webbings, these will not be covered by any BIS specifications.

5. Thereafter, a fresh Tender Notification was issued by the respondents on 25.4.2007 for the manufacture and supply of 1100 MT of webbings, and by that Notification, the required capacity of tenderers was reduced to 600 MT as against 1250 MT stipulated in the earlier Tender. The petitioner again submitted their tenders on 28.5.2007 with all relevant documents and proofs, as it was the last date for receipt of the tenders. The respondents opened the technical bids of the tenderers on the said date. After evaluation, samples were called for from the petitioner-Company for technical evaluation and approval. Accordingly, they submitted their samples and on 25.7.2007, an inspection was directed to be carried out by the Committee comprising of official of the Fishers Development Corporation, the District Revenue Officer and an Accounts Officer constituted by the Director of Fisheries. The Company made available to the said Committee all the infrastructural facilities, machineries etc. The Director of Fisheries then called for an informal meeting with the Company on 9.8.2007 and the Company was shocked to know at the said meeting that the report of the Inspection Committee had indicated that the Company's production capacity was shown to be less than 600 MT/p.a. Therefore, the Company addressed to the third respondent on the subject matter on 10.8.2007 clarifying the factual position on production capacity as well as the delivery capacity. It was surprising and ununderstandable as to how the Company which had already been found to have a capacity of more than 1250 MT while evaluating the earlier tender, has suddenly been found to have a capacity of only about 450 MT and therefore, the Company sent a notice on 11.8.2007 requesting the respondents to give them an opportunity to explain regarding their manufacturing capacity.
6. While so, the Company was shocked to know that the respondents have issued a Re-Tender Notification on 21.8.2007 inviting the tenders for supply of the same quantity of 1100 MT of webbings by reducing the production capacity of the tenderers to 100 MT. According to them, the Re-Tender Notification was issued with a reduced capacity from the manufacturers having a capacity of 100 MT, apparently on the premise that there are no manufacturers including the petitioner-Company which has the capacity to manufacture 600 MT webbings, as contained in the earlier Notification. Therefore, the action of the respondents in abandoning the earlier Tender Notification and issuing the Re-Tender Notification is wholly illegal and proceeds on a misconception of facts and law, as also violative of the provisions of the (in short "the Act") and the petitioner, having no other effective alternative remedy, has approached this Court for the above stated relief.

7. The main grounds urged by the petitioner is that the decision of the respondents in coming to the conclusion that the petitioner's annual capacity is less than 600 MT, and therefore do not qualify for the re-tender issued in April 2007, is vitiated by non-application of mind and extraneous consideration. The first Tender Notification in December 2006 has been scrapped on account of a

mistake relating to BIS specification. The Re-Tender issued in April 2007 was again for the supply of 1100 MT of webbings, in which the annual capacity of the tenderers was to be 600 MT. When the petitioner is having a capacity of more than 1250 MT in the first tender, it cannot be said to be not possessing the qualification specified in the second tender, but having inspected the factory of the petitioner, the Committee has not sent the details of the inspection or the report had not been furnished to the petitioner. Therefore, the decision of the respondents appears to have been taken on the basis of the report of the said Committee, a copy of which has not been furnished to the petitioner. The decision of the respondents cannot but be construed as arbitrary and irrational.

8. The Re-Tender Notification dated 21.8.2007 is again for the supply of 1100 MT. The production capacity of the tenderers has been reduced to 100 MT. On the facts stated by the petitioner, the fact pertaining to the petitioner's capacity in the impugned Re-Tender Notification, by which the production capacity of the tenderers has been reduced to 100 MT, smacks of irrationality and unreasonableness and there is no reason how with such low production capacity could cater to the annual need of 1100 MT webbings to be supplied to the fishermen affected by the Tsunami. Therefore, the Re-Tender Notification is vitiated by non-application of mind and arbitrariness and violative of Article 14 of the Constitution of India.

9. The decision taken by the respondents on 10.8.2007 is inconsistent with the earlier views of the respondents. Even though there was a representation by the petitioner requesting them for a personal hearing to submit the materials to show their production capacity is more than 1200 MT, which was not taken into consideration and therefore, the inaction on the part of the respondents to consider the same and the decision to issue the Re-Tender Notification, is wholly arbitrary and unreasonable.

10. The right to reject all tenders and call for a re-tender is not an absolute right and the respondents should have valid and justifying reasons to do so. In the petitioner's case, the rejection of the second Tender floated in April 2007 seems to be a wrong premise, as the petitioner was not qualified, which is non-est both on facts and in law. The true decision of the respondents to issue Re-tender Notification deserves to be set aside both for the reason that it is based on non-existent fact and also causing serious prejudice and stigma on the petitioner.

11. For the above reasons, the petitioner has approached for the relief to call for the records in connection with the Re-Tender Notification dated 21.8.2007 and the earlier Tender Notification dated 25.4.2007 and seeking to quash the Re-Tender Notification dated 21.8.2007 and for a consequential direction to the respondents to pursue the Tender Notification dated 25.4.2007 in the matter of manufacture and supply of webbings to fishermen affected by Tsunami.

12. The first respondent has filed a counter affidavit for himself as well as on behalf of the other respondents. On behalf of the first respondent, the Special Commissioner and Secretary to Government, Animal Husbandry, Dairying and Fisheries Department has filed the counter affidavit. The respondents question the maintainability of this Writ Petition in law, as the issue under consideration falls in the realm of contract. According to the respondents, it is settled law that in matters of awarding contract, which is essentially a commercial transaction, the State Government is entitled to choose its own method and arrive at appropriate decision. The Government has the freedom of contract by taking its own decision and the scope of judicial review of such decision-making process is severely circumscribed and restricted, especially when the State has taken the decision to go in for a re-tender motivated by paramount public interest. According to the respondents, the Tsunami which hit the Tamil Nadu coast on 26.12.2004, caused damages to the life and fishing implements of the fishermen in the entire coastal districts of Tamil Nadu. The

Government sanctioned various relief schemes as rehabilitation measure to the fishermen community for repairing their nets and for replacing fully damaged/lost fishing implements. About 42,000 fishermen were given relief assistance sanctioned under various Government orders. The Government in G.O.No.532, Revenue Department, dated 14.8.2006, and in Letter No.32132/Revenue, dated 22.11.2006, sanctioned a sum of Rs.110.36 crores for the purchase and supply of following assistance under the Rajiv Gandhi Rehabilitation Package:
(i) Nets (webbings) : 1100 MT
(ii) Handy Rechargeable Lanterns
(iii) Heavy duty bicycles
(iv) Life jackets
(v) Insulated Ice boxes.
Further, the Government, among other things, has allocated a sum of Rs.44 crores out of the total sanction of Rs.110.36 crores for the supply of nets (webbings) to the already benefited Tsunami affected fishermen under the above package. The total loss of nets, due to Tsunami, according to the actual assessment, was 1,100 MTS and it was therefore proposed to purchase and supply 25 Kgs. of Gill Nets worth about Rs.10,000/- to each beneficiary.
13. The Government also in G.O.Ms.No.193, Animal Husbandry, Dairying and Fisheries Department, dated 22.11.2006, issued orders constituting Technical Committees, Scrutinizing Committees, Award Committee for processing the tenders for the above commodities. The Committees constituted for purchase of nets are as follows:
Sl.No.
Name of the Committee
Members of the Committee
1
Tender Technical Committee
1. Spl. Commissioner of Fisheries- Chairman
2. Director of his representative from CIFNET - Member
3. Zonal Director or his representative of FSI, Chennai - Member
4. Joint Director of Fisheries (Marine) Member Secretary
2

Tender Scrutinizing Committee
1. Spl. Commissioner of Fisheries- Chairman
2. Joint Director of Fisheries (Marine, Inland & Research) - Members
3. Accounts Officer (Fisheries) □ Member
4. Deputy Director of Fisheries (Marine) - Member Secretary
3

Tender Award Committee
1. Secretary to Government, AHD & F Dept □ Chairman
2. Secretary to Government, Finance Department or his/her nominee - Member
3. The Director of Fisheries □ Member Secretary

The Tender Technical Committee suggested the following specifications for the knotted nylon webbings for the gill nets to be purchased with suitable mesh size:-

Knotted Gill Nets (only webbings) approved by BIS with the following specifications:
Sl.No.
Type of material
Twine size

Stretched Mesh size in mm
1
Nylon Multifilament
210 d x 1 x 2
30
2
Nylon Monofilament
0.16 mm dia
27
3
Nylon Monofilament
0.16 mm dia
36
4
Nylon Multifilament
210 d x 1 x 2
36
5
Nylon Monofilament
0.23 mm dia
56
6
Nylon Multifilament
210 d x 1 x 3
56
The Committee also recommended that nets with BIS specifications may be purchased. Based on the recommendations of the Committee, tenders for the purchase of all five components mentioned above including the nets were called for. The Tender Notice was published in the leading dailies and the tenders were invited only from the manufacturers of nets (webbings) with a production capacity of not less than 1250 MT/p.a of the above specifications. The EMD for the tender was fixed as Rs.44 lakhs. Two cover system was adopted and the tender document was based on the Act and the Tamil Nadu Transparency in Tenders Rules, 2000 (in short "the Rules").

14. The last date for receipt of tenders was upto 3.00 p.m. on 4.12.2007. Eleven tenders were purchased and only four tenders were received and respondents have taken all possible steps to process the tender as per the procedure laid down in Tender Transparency Act, 1998 and as per the conditions mentioned in the tender document. The tenders were opened at 4.00 p.m. on 5.1.2007. Only the first cover, viz., technical bid was opened. The technical bids were evaluated by the Tender Scrutinizing Committee on 22.1.2007 and only one tenderer viz. M/s.Garware Wall Ropes Limited was found technically qualified. The other three tenders, namely M/s.Kassim Nets, Nagercoil, M/s.Nirmala Monofil Pvt. Ltd., Coimbatore and M/s.Raj Nylon Exports, Chennai-28, were rejected on technical grounds.

15. It is the further case of the respondents that net manufacturing plant of the petitioner-Company was inspected on 7.2.2007 and based on the recommendations of the Tender Scrutinizing Committee on the evaluation of the Inspection Report, samples of all the webbings of the specifications mentioned in the tender document were obtained from the firm and sent to CIPET for testing on 20.2.2007. The test report on the samples was received from CIPET on 9.3.2007 and the same was evaluated by the Tender Scrutinizing Committee on 12.3.2007. The Committee recommended to conduct breaking load test of the samples as per the BIS specification by CIPET. Test report on breaking load was received from CIPET on 23.3.2007 and the same was evaluated by the

Scrutinizing Committee on 3.4.2007 and based on the recommendations of the Committee, the price bid of the technically qualified tenderer was opened on 4.4.2007 and negotiation of rates was done with the tenderer on 10.4.2007.
16. On the recommendations of the Tender Scrutinizing Committee, technical bids and price bids were placed before the Tender Award Committee meeting for taking a decision on 12.4.2007. The Tender Award Committee took note of the information given by the Scientists (Experts) from CIFT, Cochin, CIPET, Chennai, stating that there were no BIS specifications for webbings, unlike twines. However, BIS test procedures are available for both webbings and twines. Since BIS specifications were not prescribed for webbings, the technical requirements under this tender cannot be evaluated. In view of the above facts, the Award Committee asked to go for re-tender. The tender was therefore cancelled and the EMD was returned to the tenderers on 25.4.2007. Thereafter, the Tender Award Committee instructed a re-tender should be called for the purchase of 1100 MT of nets and the same was done with the following modifications:-
1. Tenders were invited from the manufacturers of nets (webbings) only with a production capacity of not less than 600 MT per annum of the specifications mentioned above (The Twine size in Sl.No.5 Nylon Monofilament was changed as 0.24 mm. dia instead of 0.23 mm dia).
2. BIS specifications were given in the tender document as follows:
. Nylon webbings should be made up of Nylon twines/monofilament yarn of BIS specifications (i.e)
Nylon multifilament (Twine): IS 4401 : 2006
Nylon monofilament : IS 7533 : 2003
. The webbing should be made up of virgin Polyamide (Nylon) twine/yarn.
. Recycled raw material (Nylon) should not be used for making webbings.

3. The Tender Scrutinizing Committee recommended to fix the production capacity as 600 MTs/annum in view of the fact that only one responsive bid was received for the first tender in which the production capacity was fixed as 1250 MTs/annum and also considering the uniqueness of the purchase in terms of volume which needs to be supplied within one year.

Accordingly, the tender notice dated 25.4.2007 inviting tenders were published in leading dailies and the last date for receipt of tenders was fixed as 3.00 p.m. on 28.5.2007. Totally, three tenders were received as follows:
(i) M/s.Garware Wall Ropes Pvt. Ltd., Pune.
(ii) M/s.Kassim Nets, Nagercoil.
(iii) M/s.Kumaran Fish Nets Private Ltd., Nagercoil.
The technical bids were opened at 4.00 p.m. on 28.5.2007 and the manufacturing plants of M/s.Kassim Nets, Nagercoil and M/s.Kumaran Nets, Nagercoil were inspected on 2.6.2007 and 22.6.2007 and the inspection notes and the technical bids were evaluated on 30.5.2007, 11.6.2007 and 22.6.2007. Samples received from the petitioner-Company were sent to CIFT, Cochin on 29.6.2007 for testing to confirm whether it meets BIS specifications. The test report received from CIFT, Cochin on 11.7.2007 confirmed the same.

17. While that being the position, a specific complaint against the production capacity of the petitioner-Company was received, and it was decided by the Tender Scrutinizing Committee on 24.7.2007 to depute a team of officials to inspect as to whether the petitioner-Company has the production capacity of its own for the descriptions of the works as specified in the tender. The petitioner-Company was re-inspected from 25.7.2007 to 28.7.2007. The inspection team found that the petitioner-Company did not possess the capacity claimed in the tender document. Thereafter, the Tender Scrutinizing Committee has evaluated the technical bids, inspection reports of all the tenderers and test reports on the samples of the petitioner-Company. Since no one was found qualified in the evaluation process by the Tender Scrutinizing Committee, the tenders of all the three tenderers including the petitioner-Company's tender, were rejected.

18. The Tender Scrutinizing Committee in its meeting held on 9.8.2007, has made the following recommendations:

"1. By experience in the previous two tenders, there were no suitable suppliers even after the reduced production quality of 600 MTs/year as eligibility criteria.
2. 1100 MTs of Nylon webbings have to be distributed to the fishermen within a timeframe of one year.
3. To ensure better participation in tender and going by the previous experience, that there is no suitable manufacturer with the production capacity of 1250 MT/annum and 600 MT/annum, the production capacity may be reduced to 100 MT/annum.
4. The Government may be addressed to permit the third respondent to go for re-tender under fixed rate contract system and to reduce the production capacity to 100 MTs/annum (60% monofilament : 40% multifilament) of webbings of specified description in the tender and also to reduce the time limit to 15 days for inviting tenders, since the tender call is for the third time and all the manufacturers were aware of the supply of webbings to fishermen.
Therefore, the Government was addressed on the above lines in the letter No.38116/TPIU/07, dated 9.8.2007 by the third respondent and the Government in Letter No.16926/FSI/2007-1, dated 17.8.2007 permitted the third respondent to go for re-tender under fixed rate contract system and to reduce the time limit to 15 days. Therefore, the tenders were cancelled on 17.8.2007. The petitioner's tender was also cancelled on 17.8.2007-vide third respondent's letter No.55055/P1/2007, dated 17.8.2007 and the EMD of Rs.44 lakhs was returned to the petitioner. As instructed by the Government in Letter No.16926/FSIII/2007-1, dated 17.8.2007 to the third respondent, re-tender II was called for the purchase of 1100 MTs of nets with the following modifications:
(i) Nylon webbings should be made up of Nylon twines/monofilament yarn of BIS specifications (i.e).
Nylon Multifilament (Twine) : IS 4401:2006
Nylon Monofilament : IS 7533:2003
(ii) The manufacturers shall have their production capacity of webbings in the ratio of 60:40 of monofilament : multifilament respectively.
(iii) The webbing should be made up of virgin Polyamide (Nylon) Twine/Yarn.
(iv) Recycled raw material (Nylon) should not be used for making webbings.

19. Tender notice inviting re-tenders dated 21.8.2007 was published in the leading dailies and corrigendum was also issued on 23.8.2007. The eligibility criteria for bidders have been prescribed in the tender notice as follows:
(a) The bidder shall be a registered manufacturer having a minimum individual annual production capacity of 100 MTs of nylon (Polyamide) nets (Double knotted Nylon webbings) in the ratio of 60% monofilament : 40% multifilament nylon nets (double knotted nylon webbings) of the specified description in the tender schedule and having experience in the production and marketing of the webbings of the specifications described in the tender document for a minimum period of three years.
(b) Alliance or agreement of any type with any manufacturer/dealer/distributor dealing with the said nylon webbings like Consortium/lease rent/joint venture etc. shall be rejected.
(c) The bidders should provide samples in a separate cover of multifilament twines and monofilament yarn for making knotted nylon webbings and also samples of the webbings of the descriptions specified in the tender document made out of the above indicated twines/yarns along with tender document.
(d) EMD has been reduced and fixed as Rs.11 lakhs.
(e) Two cover system will be followed.
(f) Production of production plan has been made mandatory.
Last date for receipt of tenders has been fixed on 6.9.2007 upto 3.00 p.m.

20. Hence, it is the case of the respondents that in view of the facts stated by the respondents as above, it reveals that there is no mala-fide or wilful intention on the part of the respondents to cancel the earlier tender and invite fresh tender as notified on 21.8.2007. There is no iota of evidence to show that the tender process is arbitrary or actuated by malice. The tender was necessitated only due to the ineligibility of the tenderers and therefore, the re-tender is the only logical conclusion in view of the circumstances stated above.

21. It is stated by the respondents that the petitioner-Company is having only 106 machines and not 110 machines as contended by the petitioner for production of nets, and these nets are different from the requirement of the tender. The respondents have not issued any tender notice on 21.12.2006 as contended by the petitioner and the tender dated 4.12.2006 was for the supply of webbings of the specifications mentioned earlier. This was clearly mentioned that the production capacity specified should be for the specifications mentioned in the tender document. The contention of the petitioner that the tenders were opened on 8.1.2007 is not correct, but opened on 5.1.2007.

22. Since the inspection of the manufacturing plant is one of the established methods to evaluate the technical bid, the team of officials as suggested by the Tender Scrutinizing Committee was deputed to inspect the plant noted in the tender document, i.e. plant at Wai and verify with the details furnished in the tender document to the field realities. The inspection team has inspected the net manufacturing unit of the petitioner at Wai on 7.2.2007 and 8.2.2007. It is submitted that the writ petitioner has shown in the tender document that the supply of nets as notified in the tender, will be produced from the machines in the plant at Wai itself. In the tender document, the petitioner has mentioned that the plant at Wai has the production capacity of 5520 MTs/annum, but these nets are different from the requirements of the tender. The inspection team was provided with false information with a view to mislead the team so that the team can give a report that the petitioner's plant at Wai has the capacity to produce 5520 MTs/annum. But by its own admission by way of a signed production plan dated 10.8.2007, the petitioner-Company proved itself that it did not have the production capacity of 5520 MTs as shown in the tender document. It is proved from the production plan that the petitioner has submitted that it has only the production capacity of 277.602 MT/annum from its own machines. The petitioner has shown in its first tender schedule the annual production capacity from its own machines as 5520 MTs and in the first re-tender document as 5520 MTs and at the time of inspection, 696 MTs by a production plan, which includes its 24 own machines and 29 machines taken on lease. The above details clearly establish that the petitioner-Company has contradicted its own production capacity which it had furnished in the tender schedule of first tender and first re-tender and at the time of inspection from 25.7.2007 to 28.7.2007 and the information furnished in the representation dated 10.8.2007. The petitioner-Company gave false information in the tender document to the inspection team and has now come before this Court with mala-fide intention of securing the contract with unclean hands. It is surprising to note that the petitioner-Company which claims to be awarded with "One Star Export House" status, by the Ministry of Commerce, Government of India, and having an "ISO:9001-2000" accreditation, has suppressed the real facts, but has come up with the reports of contradicting and false production capacity. No doubt, the petitioner has obtained such star status for export. But at the same time, the petitioner does not have manufacturing capacity to produce the webbings as specified and described in the tender document.

23. It is submitted by the respondents that the team consisting of three officials of (i) a District Revenue Officer (ii) a General Manager with experience in fishery activities from the Tamil Nadu Fisheries Development Corporation and head of the fish net manufacturing plant, a Government of Tamil Nadu undertaking and (iii) Technician (not Accounts Officer, as contended by the petitioner) working in fish net manufacturing plant of Tamil Nadu Fisheries Development Corporation was deputed to inspect the plant. By its own admission, the petitioner-Company has proved that from the rest of the machines in the factory at Wai, the webbings of the specifications in the tender cannot be

produced.

24. The petitioner proved itself that the petitioner has production capacity around 148 MT/annum from the net (webbings) manufacturing plant at Wai including the machines of higher pitch which cannot produce the webbings of the specifications given in tender. The petitioner-Company thus by furnishing false information and by suppressing the fact on real production capacity, tried to mislead the Court with a mala-fide intention to gain out of the scheme meant for the social cause. It clearly establishes that the petitioner-Company does not possess the production capacity as mentioned in the tender document. Hence, there is no non-application of mind and there is no place for extraneous consideration as contended by the petitioner.

25. It is the case of the respondents that Rule 27 of the Tamil Nadu Transparency in Tenders Rules, 2000 clearly spells out that tender evaluation process is a confidential one until the award of the contract is notified. In the production plan submitted to the third respondent on 10.8.2007 and to the inspection team on 25.7.2007, the petitioner-Company has introduced two new elements i.e. "machines at new location" i.e. Silvassa and "the machines taken on lease" that had not been shown in the tender document for the production of webbings of the specifications mentioned in the tender and re-tender document.

26. In the counter affidavit, it is further stated that the writ petitioner-Company is shown as its first tender schedule, the annual production capacity from its own machines a 5520 MTs/annum and in the first re-tender document as 5520 MTs/annum and at the time of inspection by way of production plan as 148 MTs/annum from its own machines at Wai and 129 MTs/annum from its own machines at Silvassa, putting together its 15 own machines at Wai and 9 own machines at a different location, viz. Silvassa and 29 machines taken on lease. The production capacity as shown by it out of its own machines in the two locations (Wai and Silvassa) in the signed production plan is 277.602 MT/annum (plants at Wai and Silvassa). The machines are running at an efficiency of 66% and if this efficiency is taken into account, then the in-house production capacity per annum of the petitioner-Company is 143.626 MT/annum. The foregoing details clearly establish that the petitioner-Company has contradicted its own production capacity which it had furnished in the tender schedule of the first tender and first re-tender and at the time of inspection from 25.7.2007 to 28.7.2007 and the information furnished in the representation dated 10.8.2007. Therefore, it is evident that the petitioner-Company wants to gain out of the contract by producing false information in the tender document. The above details will clearly prove that there is no arbitrariness. Without having the prescribed production capacity for the webbings of the prescribed specifications in the tender notice, the petitioner-Company has submitted the tender, stating that it has 5520 MT per annum of nets (webbings) and then giving 696 MT/annum and then by proving by its own admission in the production plan as 277.602 MT/annum from its own machines. The petitioner has shown in the tender document, only the net manufacturing plant at Wai and in the Writ Petition, it has shown that 110 machines are there for the production of these webbings, whereas 106 machines are there in the said plant. But of these 106, by its own admission in the production plan, the production of the webbings of the specifications in the tender can be done only from 15 machines inclusive of four higher pitch machines. By the petitioner's own admission, it proved that the rest of the machineries in the said plant cannot produce the webbings of the said specifications in the tender document. Therefore, the said action of the petitioner has caused much damage, delay and hardship to the respondents, besides, preventing them from implementing the welfare schemes meant for the welfare of the downtrodden Tsunami affected fishermen.

27. Thus, from the foregoing facts stated by the respondents, it is evident that the petitioner-Company did not have the production capacity for the webbings of the descriptions specified in the tender dated 25.4.2007 and hence, the rejection of the tender of the petitioner-Company is based on

valid grounds. Had the contract been given to the petitioner-Company which did not have the production capacity, the end result would be non-performance of the contract, which would ultimately affect the already-affected Tsunami fishermen.

28. It is the further case of the respondents that the law laid down by the Supreme Court in 2005 (4) SCC 435 (Global Energy Limited and another vs. Adani Export Limited and others) that the terms of the invitation to tender are not open to judicial scrutiny and the Courts cannot whittle down the terms of the tender as they are in the realm of contract, unless they are wholly arbitrary, discriminatory or actuated by malice. Since the petitioner-Company has not made out any case, the said decision reported in 2005 (4) SCC 435 squarely applies and the Writ Petition is liable to be dismissed.

29. A reply affidavit was filed by the petitioner-Company reiterating its earlier stand taken in the affidavit filed in support of the writ petition.

30. Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the petitioner, in his submissions, has strenuously contended that the petitioner-Company is one of the largest manufacturers of synthetic cordage in the world and one of the largest in India. It has been awarded the Star Export House status by the Ministry of Commerce, Government of India, besides ISO:9001:2000 accreditation. The learned Senior Counsel further contended that the petitioner-Company is having a strong domestic performance and are predominant in the field of export market. The petitioner-Company is specialised in providing application-based specials for fishing, shipping and oil exportation industries. The petitioner has a very big factory with more than 110 machines, which can be put to use for the manufacture and supply of webbings for bulk quantities. The learned Senior Counsel stressed on the fact that on 21.12.2006, the tenders were called for the supply of 1100 MT of webbings from the manufacturers having annual capacity of not less than 1150 MT and the petitioner's capacity has been ascertained and found to be of 1250 MT or more annually. While so, the decision of the respondents in coming to the conclusion that the petitioner's annual capacity is less than 600 MT and does not qualify for Re-Tender issued in April 2007, is vitiated by non-application of mind and the same is only based on extraneous consideration. Further, the first Tender Notification issued in December 2006 has been scrapped on account of the mistake relating to the BIS specifications. The Re-Tender issued was again for supply of 1100 MT of webbings with annual capacity of the tenderer at 600 MT. Earlier, though the petitioner was stated to have a capacity of more than 1250 MT when the first Tender Notification was issued in December 2006, and when the Committee of the respondents inspected, the copy of the inspection report having not been furnished, the decision of the respondents based on the said Committee report, is nothing but arbitrary and irrational.

31. The learned Senior Counsel appearing for the petitioner further contended that the Re-Tender Notification issued on 21.8.2007 is again for the supply of 1100 MT of webbings, with the production capacity of the tenders being reduced by 100 MT and such an act of the respondents smacks of irrationality and unreasonableness and it could not be understandable as to how such a low production capacity could cater to the annual need of 1100 MT of webbings, to be supplied to the fishermen affected by Tsunami. Therefore, the impugned Re-Tender Notification is vitiated by non-application of mind and arbitrariness, besides being violative of Article 14 of the Constitution of India.

32. It is zealously contended by the learned Senior Counsel appearing for the petitioner-Company that even though there was a representation requesting the respondents to give personal hearing to submit the materials to show that their production capacity is more than 1200 MT, it was not at all

considered and the inaction on the part of the respondents is arbitrary and unreasonable and therefore, the Re-Tender Notification is liable to be set aside.

33. It is lastly contended by the learned Senior Counsel appearing for the petitioner that the respondents ought to have given valid and justifying reasons for calling for a Re-Tender and the rejection of the second Tender in April 2007 seems to be on a wrong premise that the petitioner is not qualified, which is non-est both in law and on facts. Hence, looked at from any angle, the decision of the respondents to issue Re-Tender Notification deserves to be set aside both for the reason that it is based on non-existent fact and also causing serious prejudice and stigma on the petitioner.

34. The prayer in Writ Petition No.27258 of 2007 is for issuance of a Writ of Mandamus, directing the respondents to approve the technical bid of the petitioner in cover No.1 in T.D.No.2, dated 2.5.2007 and declare the successful tenderer opening cover No.2.

35. The prayer in Writ Petition No.28485 of 2007 is for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the advertisement made by the third respondent in second Re-Tender Ref.No.019/TIPU/2007, dated 17.8.2007 i.e. (DIPR/3473/Tender/2007, dated 6.9.2007) for supply of 1100 MTs of Double Knotted Nylon Nets (Webbings) from the manufacturers under fixed rate contract system advertised in the New Indian Express dated 21.8.2007 and corrigendum dated 23.8.2007 and quash the same and direct the respondents to finalise the first Re-Tender DIPR/1521/Tender/Document/2007, dated 28.5.2007.

36. The case of the petitioner in W.P.No.27258 of 2007 is as follows:

The petitioner-Company is a reputed manufacturer of all kinds of fishing nets, that the petitioner has been in the trade since 1986, that M/s.World Vision India and M/s.Salvation Arym placed orders to the petitioner for supply of fish nets having appreciated the quality products of the petitioner, that by tender document in T.D.No.02, dated 2.5.2007, the second respondent had invited sealed tenders from the manufacturers of nylon webbings with a production capacity of not less than 600 metric tonnes per annum for the description of works specified in the tender document and that the tender for the supply of 1100 MT of knotted nylon webbings is as per the following specifications:
Sl.No.
Type of material
Twine size
Stretched Mesh size in mm
1
Nylon Multifilament
210 d x 1 x 2
30
2
Nylon Monofilament
0.16 mm dia
27
3
Nylon Monofilament
0.16 mm dia
36
4
Nylon Multifilament
210 d x 1 x 2

36
5
Nylon Monofilament
0.23 mm dia
56
6
Nylon Multifilament
210 d x 1 x 3
56
37. It is the further case of the petitioner in W.P.No.27258 of 2007 that the petitioner-Company submitted its tender on 28.5.2007 to the second respondent, that the petitioner deposited a sum of Rs.44 lakhs by way of EMD besides producing a solvency certificate from the State Bank of India, Nagercoil Branch for a sum of Rs.4,40,00,000/- as per the terms and conditions of the tender, that as per the tender condition, the manufacturers of nylon webbings should have production capacity of 600 MT/p.a., that since the petitioner's unit manufacturing capacity is 282.5 MT/p.a., the petitioner took lease of two other manufacturing units, namely (i) M/s.Netpark at Anandanadarkudi, Nagercoil-629 201, Kanyakumari District and (ii) M/s.Ajantha Fish Nets, No.14-C, Government Industrial Estate, Konam, Nagercoil-629 004, having capacity of 752.5 MT and 197.5 MT respectively in compliance of the terms and conditions of the tender, that the manufacturing capacity of the petitioner's unit is thus 1235.5 MT which is obviously double the requisite manufacturing capacity of 600 MT, that the petitioner has submitted the tender along with the two lease agreements entered into between the petitioner and the above lessees, that the second respondent, by letter dated 30.5.2007, informed the petitioner that the Tender Scrutinizing Committee which evaluated the technical bids of the tenderers, decided to depute a team of officials and required the petitioner to keep the plant and machineries in operating conditions on 2.7.2007, besides requiring the petitioner to make available all the documents for inspection and verification, that in pursuance of the said letter, the officials visited the manufacturing units of the petitioner on 2.7.2007, 5.7.2007 and 21.7.2007 respectively and that the Tender Scrutinizing Committee was satisfied with the production capacity of the petitioner-Company which is about 1235.5 MT.

38. The petitioner-Company in W.P.No.27258 of 2007 further states that one of the tenderers, namely M/s. Garware Wall Ropes Limited was considered for being given the tender work, that the second respondent took sample nets from them indicating consideration of their tender, that besides the petitioner herein and M/s.Garware Wall Ropes Ltd., there is another tenderer M/s.Kumaran Nets, that the said M/s.Garware Wall Ropes Ltd. does not possess the requisite technical bid qualification, namely the production capacity of 600 MT of nylon webbings entitling the second respondent to take sample nets from them, that the petitioner made a letter to the second respondent on 18.7.2007, stating that the said M/s.Garware Wall Ropes Ltd. lacks the above production capacity, that even before inspecting the manufacturing unit of the said M/s.Garware Wall Ropes Ltd., the second respondent obtained the sample nets from them and that the same is improper, that only after 18.7.2007 letter of the petitioner, the second respondent caused inspection of the manufacturing unit of the said M/s.Garware Wall Ropes Ltd., that the action of the respondents is indicative of the pre-determined approach to help M/s.Garware Wall Ropes Ltd., that the petitioner believes that the official team, having inspected the premises of M/s.Garware Wall Ropes Ltd., they lack the production capacity of 600 MT per year and submitted report in that behalf to the second respondent, that the respondents are attempting to reject the tender of this petitioner under one pretext or the other and that this petitioner cannot be disqualified since they have the production capacity of about 1235.5 MT, which is double the required capacity as per the Tender Notification.

39. The further case of the petitioner in W.P.No.27258 of 2007 is that the respondents are bound to

call for the sample nets from the petitioner for proceeding to open Cover No.2, namely the price bid, that the respondents are bound by the principle of promissory estoppel, that the petitioner was not heard till the date of filing of the writ petition, which is in violation of the principles of natural justice and that the conduct and action of the respondents is arbitrary, whimsical and illegal in not considering the tender of the petitioner-Company though they satisfy the required production capacity, besides the action of the respondents is offending Articles 14 and 21 of the Constitution of India.

40. The case of the petitioner in W.P.No.28485 of 2007 is as follows:

(a) The Government of India, under Rajiv Gandhi Rehabilitation Package for Tsunami victims, has allocated Rs.110 crores under five categories, namely nets, handy rechargeable lanterns, heavy duty bicycles, life jackets and insulated ice boxes, etc., of which an amount of Rs.44 crores has been allocated for nets (webbings), that the tenders for remaining 4 categories have already been finalised and awarded, that the category of 'nets (webbings)' is the only item remaining to be finalised, that the respondents have been dilly-dallying with the tenders without finalising the tender for nets (webbings) resulting in inordinate delay in the implementation of the programme for which the amount has been earmarked.

(b) The petitioner in W.P.No.28485 of 2007 is a reputed manufacturer of all kinds of fishing nets, that the petitioner has been in the trade since 1986, that M/s.World Vision India and M/s.Salvation Arym placed orders to the petitioner for supply of fish nets having appreciated the quality products of the petitioner, that on 12.12.2006, the petitioner obtained tender documents for supply of 1100 MTs of knotted nylon gill nets (webbings) at a cost of Rs.15,000/- plus tax, pursuant to the tenders called for by the second respondent to the Tsunami affected fishermen under the Rajiv Gandhi Rehabilitation Package, that on 4.1.2007, the petitioner submitted the tender along with necessary documents and the EMD of Rs.44 lakhs, that in addition to the petitioner, M/s.Garware Wall Ropes Ltd. was the other tenderer which has submitted the tender, that the eligibility condition prescribed by the second respondent is that the manufacturer of nets (webbings) should have a production capacity of not less than 1250 MTs per annum for the description of work specified, that the other condition is that the webbing and twines used should conform to BIS standard and specification, that on 25.4.2007 the third respondent addressed a letter to the petitioner stating that the Tender Award Committee constituted by the Government has decided to call for a Re-Tender for the nets (webbings), that the EMD deposited by the petitioner to the tune of Rs.44 lakhs was returned on 25.4.2007 along with a letter without assigning any reason after a lapse of nearly four months, that the third respondent called for Re-Tender for supply of 1100 MTs of knotted nylon webbings from the manufacturers of nylon webbings with a production capacity of not less than 600 MT per annum instead of 1250 MT production capacity fixed in the original tender, that the petitioner units have a capacity of more than 1250 MT per annum even though the prescribed production capacity pursuant to the Re-Tender has been fixed at 600 MT, that the petitioner has also submitted a Certificate from the Chartered Accountant, dated 23.5.2007, to the said effect, that on 2.5.2007, the petitioner received the tender documents after payment of Rs.15,000/- plus taxes as documents charges and on 28.5.2007, the tender was submitted along with all documents and EMD of Rs.44 lakhs.

(c) M/s.Garware Wall Ropes Ltd. and Kumaran Nets were the other two tenderers who have submitted their tenders in response to the Re-Tender called by the third respondent on 2.5.2007, that on 30.5.2007, the third respondent addressed a letter to the petitioner stating that the Tender Scrutinizing Committee decided to depute a team of officials to inspect the unit on 2.6.2007, that the petitioner made arrangements for inspection by the said Committee, that on 2.6.2007, the Inspection Team inspected the petitioner unit, that on 5.6.2007, the petitioner made a representation to the third respondent stating that the said Committee has not inspected the other two leased units of the

petitioner, that on 8.6.2007 and 21.6.2007, based on the said representation, the Team inspected the other two units, that the said Committee was satisfied with the production capacity of not less than 600 MT/p.a. of the petitioner even though the petitioner's installed production capacity is 1305 MT and average production capacity is 1044 MT/p.a, which is nearly double the required production capacity in the Re-Tender called for by the third respondent, that on 13.8.2007, the petitioner preferred W.P.No.27258 of 2007 before this Court for a mandamus to direct the third respondent to approve the technical bid of the petitioner in Cover No.1 in T.D.No.02, dated 2.5.2007, and to declare the successful tenderer by opening cover No.2 consisting the price bid, that the tender submitted by the petitioner consists of two parts, i.e. Cover No.1 relating to technical bid and Cover No.2 relating to the price bid, that on 28.5.2007, the technical bid submitted by the petitioner was opened by the third respondent to verify the genuineness and eligibility condition of the petitioner-Unit, that it is the bounden duty of the third respondent to open the price bid, that no steps have been taken to call for the samples and for opening the price bid, that on 16.8.2007, this Court issued notice to the respondents in W.P.No.27258 of 2007 and the said W.P. is pending.

(d) On 18.7.2007, the petitioner in W.P.No.28485 of 2007 made a representation to the Chief Minister, Finance Secretary, Government of Tamil Nadu and the first respondent, pointing out the fact while the third respondent has inspected the units of the petitioner, the same was not done in respect of M/s.Garware Wall Ropes Ltd., the other bidder, that the petitioner requested the first respondent to depute a technical team to visit the factory premises of the said M/s.Garware Wall Ropes Ltd., for verification of their manufacturing capacity, that the reduction of the production capacity has been resorted to in order to accommodate the other tenderers, that in the meanwhile, the third respondent called for second Re-Tender and if the third respondent is permitted to process the second Re-Tender, the said W.P. in W.P.No.27258 of 2007 would become infructuous depriving the opportunity of the petitioner to succeed in the bid, that the third respondent on 21.8.2007, again made an advertisement in "The New Indian Express" calling for second Re-Tender for supply of 1100 MT of double knotted nylon webbings with a minimum production capacity of 100 MT/p.a. of their own individual capacity, that on 23.8.2007, the third respondent issued a corrigendum stating that "Title in Para 1 of Tender Notice dated 21.8.2007 shall be read as "Re-Tender Notice" ", fixing 6.9.2007 as last date for submission of tenders, that the reason for calling for Re-Tender is in order to accommodate their own personnel for supply of double knotted nylon webbings, that the respondents have been decreasing the production capacity of the suppliers as under in order to accommodate the tenderers of their choice:
Tender Notice dated 4.1.2007 – 1250 MT/p.a
(for 1100 MT of knotted nylon webbings)

Tender Notice dated 28.5.2007 – 600 MT/p.a
(for 1100 MT of knotted nylon webbings)

Tender Notice dated 6.9.2007 – 100 MT/p.a
(for 1100 MT of double knotted nylon webbings)

(e) It is the case of the petitioner in W.P.No.28485 of 2007 that the sum of Rs.44 lakhs has been with-held for nearly four months in the original tender and for nearly three months in the first Re-Tender, that the action of the respondents is with ulterior motive and with only a pre-determined mind in awarding the contract and that the public interest would suffer and would defeat the social purpose for providing relief to the Tsunami affected people.

(f) The above stated facts show only vindictive action of the respondents and the same is without any rhyme or reason, besides being arbitrary, illegal, capricious and contrary to all cannons of principles of natural justice and violative of the mandate prescribed under Articles 14 and 19 of the

Constitution of India and the provisions of the Act and Rules.

41. A common counter affidavit has been filed by the respondents in both the Writ Petitions (W.P.Nos.27258 and 28485 of 2007), stating as follows:
The Writ Petitions are not maintainable in law as the issue under consideration falls in the realm of contract, that it is settled law in matters of awarding of contract, which is essentially a commercial transaction, the State Government is entitled to choose its own method and arrive at an appropriate decision. The Government has the freedom to contract by taking its own decision and the scope of judicial review of such decision-making process is severely circumscribed and restricted, especially when the State has taken the decision to go in for Re-Tender motivated by paramount public interest. The Tsunami hit the Tamil Nadu coast on 26.12.2004 and caused damages to the life and fishing implements of the fishermen in the entire coastal Districts of Tamil Nadu, that the Government sanctioned various relief schemes as rehabilitation measure to the fishermen community for repairing their nets and for replacing fully damaged/lost fishing implements, about 42,000 fishermen were given relief assistance sanctioned under various Government orders. As a huge amount was available from the total sanctioned relief assistance, the Government in Order No.532, Revenue Department, dated 14.8.2006, read with Government Letter of the Revenue Department, dated 22.11.2006, sanctioned a sum of Rs.110.36 crores for the purchase and supply of nets of 1100 MTs, handy rechargeable lanterns, heavy duty bicycles, life jackets and insulated ice boxes, with quality, for assistance under the Rajiv Gandhi Rehabilitation Package.

42. It is further averred in the counter affidavit that the Government, among other things, allocated a sum of Rs.44 crores out of the total sanction of Rs.110.36 crores for supply of nets to the already benefited Tsunami affected fishermen under the above Package, that the total loss of nets, due to Tsunami, according to actual assessment was 1100 MTs, that it was therefore proposed to purchase and supply 25 Kgs. of Gill Nets to each beneficiary at a unit cost of Rs.400/- per Kg, subject to a maximum of Rs.10,000/- per beneficiary, that the Government, in G.O.Ms.No.193, Animal Husbandry, Dairying and Fisheries Department, dated 22.11.2006, issued orders constituting Technical Committee, Scrutinizing Committee and Award Committee for processing the tenders and the Committees for the purchase of nets are as follows:
Sl.No.
Name of the Committee
Members of the Committee
1
Tender Technical Committee
1. Spl. Commissioner of Fisheries- Chairman
2. Director of his representative from CIFNET - Member
3. Zonal Director or his representative of FSI, Chennai - Member
4. Joint Director of Fisheries (Marine) Member Secretary
2

Tender Scrutinizing Committee
1. Spl. Commissioner of Fisheries- Chairman
2. Joint Director of Fisheries (Marine, Inland & Research) - Members
3. Accounts Officer (Fisheries) Member
4. Deputy Director of Fisheries (Marine) - Member Secretary
3

Tender Award Committee
1. Secretary to Government, AHD & F Dept Chairman
2. Secretary to Government, Finance Department or his/her nominee - Member

3. The Director of Fisheries Member Secretary

The Tender Technical Committee suggested the following specifications for the knotted nylon webbings for the gill nets to be purchased with suitable mesh size:-
Knotted Gill Nets (only webbings) approved by BIS with the following specifications:
Sl.No.
Type of material
Twine size
Stretched Mesh size in mm
1
Nylon Multifilament
210 d x 1 x 2
30
2
Nylon Monofilament
0.16 mm dia
27
3
Nylon Monofilament
0.16 mm dia
36
4
Nylon Multifilament
210 d x 1 x 2
36
5
Nylon Monofilament
0.23 mm dia
56
6
Nylon Multifilament
210 d x 1 x 3
56

The Committee also recommended that nets with BIS specifications, may be purchased.

43. It is further averred in the counter that based on the recommendations of the Committee, tenders for purchase of all the above said five components including nets were called for, that the Tender Notice was published in the leading dailies, that the tenders were invited only from the manufacturers of nets (webbings) with a production capacity of not less than 1250 MT per annum of above specifications, that the EMD for the tender was fixed at Rs.44 lakhs and that the cover system was adopted and the tender document was based on the Act and Rules. The last date for receipt of tenders was upto 3.00 p.m. on 4.12.2007. Eleven tenders were purchased and only four tenders were received and respondents have taken all possible steps to process the tender as per the procedure laid down in the Act and as per the conditions mentioned in the tender document. The tenders were opened at 4.00 p.m. on 5.1.2007. Only the first cover, viz., technical bid was opened. The technical bids were evaluated by the Tender Scrutinizing Committee on 22.1.2007 and only one tenderer viz. M/s.Garware Wall Ropes Limited was found technically qualified. The other three tenders, namely M/s.Kassim Nets, M/s.Nirmala Monofil Pvt. Ltd. and M/s.Raj Nylon Exports, were rejected on technical grounds. The net manufacturing plant of the qualified tenderer viz.

M/s.Garware Wall Ropes Ltd., was inspected on 7.2.2007 and based on the recommendations of the Tender Scrutinizing Committee on the evaluation of the Inspection Report, samples of all the webbings of the specifications mentioned in the tender document were obtained from the firm and sent to CIPET for testing on 20.2.2007. The test report on the samples was received from CIPET on 9.3.2007 and the same was evaluated by the Tender Scrutinizing Committee on 12.3.2007. The Committee recommended to conduct breaking load test of the samples as per the BIS specification by CIPET. Test report on breaking load was received from CIPET on 23.3.2007 and the same was evaluated by the Scrutinizing Committee on 3.4.2007 and based on the recommendations of the Committee, the price bid of the technically qualified tenderer was opened on 4.4.2007 and negotiation of rates was done with the tenderer on 10.4.2007. On the recommendations of the Tender Scrutinizing Committee, technical bids and price bids were placed before the Tender Award Committee meeting for taking a decision on 12.4.2007. The Tender Award Committee took note of the information given by the Scientists (Experts) from CIFT, Cochin, CIPET, Chennai, stating that there were no BIS specifications for webbings, unlike twines. However, BIS standard test procedures are available for both webbings and twines. Since BIS standard specifications were not prescribed for webbings, the technical requirements under this tender cannot be evaluated. In view of the above facts, the Award Committee asked to go for re-tender. The tender was therefore cancelled and the EMD was returned to the tenderers on 25.4.2007. Thereafter, the Tender Award Committee instructed a re-tender should be called for the purchase of 1100 MT of nets and the same was done with the following modifications:-
1. Tenders were invited from the manufacturers of nets (webbings) only with a production capacity of not less than 600 MT per annum of the specifications mentioned above (The Twine size in Sl.No.5 Nylon Monofilament was changed as 0.24 mm. dia instead of 0.23 mm dia).

2. BIS specifications were given in the tender document as follows:

. Nylon webbings should be made up of Nylon twines/monofilament yarn of BIS specifications (i.e)
Nylon multifilament (Twine): IS 4401 : 2006
Nylon monofilament : IS 7533 : 2003
. The webbing should be made up of virgin Polyamide (Nylon) twine/yarn.
. Recycled raw material (Nylon) should not be used for making webbings.

3. The Tender Scrutinizing Committee recommended to fix the production capacity as 600 MTs/annum in view of the fact that only one responsive bid was received for the first tender in which the production capacity was fixed as 1250 MTs/annum and also considering the uniqueness of the purchase in terms of volume which needs to be supplied within one year.
Accordingly, the tender notice dated 25.4.2007 inviting tenders was published in leading dailies and the last date for receipt of tenders was fixed as 3.00 p.m. on 28.5.2007. Totally, three tenders were received as follows:
(i) M/s.Garware Wall Ropes Pvt. Ltd., Pune.
(ii) M/s.Kassim Nets, Nagercoil.
(iii) M/s.Kumaran Fish Nets Private Ltd., Nagercoil.

44. The technical bids were opened at 4.00 p.m. on 28.5.2007 and the manufacturing plants of M/s.Kassim Nets, Nagercoil and M/s.Kumaran Nets, Nagercoil were inspected on 2.6.2007 and 22.6.2007 and the inspection notes and the technical bids were evaluated on 30.5.2007, 11.6.2007 and 22.6.2007. Samples received from M/s.Garware Wall Ropes Ltd. were sent to CIFT, Cochin on 29.6.2007 for testing to confirm whether it meets BIS specifications. The test report received from CIFT, Cochin on 11.7.2007 confirmed the same.

45. While that being the position, a specific complaint dated 19.7.2007 against the production capacity of the said M/s.Garware Wall Ropes Ltd. was received and it was decided by the Tender Scrutinizing Committee on 24.7.2007 to depute a team of officials to inspect as to whether the said Company has the production capacity of its own for the descriptions of the works as specified in the tender. The said Company was re-inspected from 25.7.2007 to 28.7.2007. The inspection team found that the Company did not possess the capacity claimed in the tender document. Thereafter, the Tender Scrutinizing Committee has evaluated the technical bids, inspection reports of all the tenderers and test reports on the samples of the said Company. Since no one was found qualified in the evaluation process by the Tender Scrutinizing Committee, the tenders of all the three tenderers, namely M/s.Garware Wall Ropes Ltd., Pune, M/s.Kassim Nets, Nagercoil and M/s.Kumaran Nets, were rejected. The Tender Scrutinizing Committee in its meeting held on 9.8.2007, has made the following recommendations:
"1. By experience in the previous two tenders, there were no suitable suppliers even after the reduced production quality of 600 MTs/year as eligibility criteria.
2. 1100 MTs of Nylon webbings have to be distributed to the fishermen within a timeframe of one year.
3. To ensure better participation in tender and going by the previous experience, that there is no suitable manufacturer with the production capacity of 1250 MT/annum and 600 MT/annum, the production capacity may be reduced to 100 MT/annum.

4. The Government may be addressed to permit the third respondent to go for re-tender under fixed rate contract system and to reduce the production capacity to 100 MTs/annum (60% monofilament : 40% multifilament) of webbings of specified description in the tender and also to reduce the time limit to 15 days for inviting tenders, since the tender call is for the third time and all the manufacturers were aware of the supply of webbings to fishermen.

Therefore, the Government was addressed on the above lines in the letter No.38116/TPIU/07, dated 9.8.2007 by the third respondent-Director of Fisheries and the Government in Letter No.16926/FSI/2007-1, dated 17.8.2007 permitted the third respondent (Director of Fisheries) to go for re-tender under fixed rate contract system and to reduce the time limit to 15 days. Therefore, the tenders were cancelled on 17.8.2007. The said M/s.Garware Wall Ropes Pvt. Ltd's tender was also cancelled on 17.8.2007-vide third respondent's letter No.55055/P1/2007, dated 17.8.2007 and the EMD of Rs.44 lakhs was returned to it. In view of this, the prayer in W.P.No.27258 of 2007 has become incapable of being granted and the same has become infructuous and the said W.P.No.27258 of 2007 is liable to be dismissed in-limine.

46. It is the further case of the respondents in the counter that as instructed by the Government in Letter No.16926/FSIII/2007-1, dated 17.8.2007, re-tender II was called for the purchase of 1100 MTs of nets with the following modifications:
(i) Nylon webbings should be made up of Nylon twines/monofilament yarn of BIS specifications (i.e).
Nylon Multifilament (Twine) : IS 4401:2006
Nylon Monofilament : IS 7533:2003
(ii) The manufacturers shall have their production capacity of webbings in the ratio of 60:40 of monofilament : multifilament respectively.
(iii) The webbing should be made up of virgin Polyamide (Nylon) Twine/Yarn.
(iv) Recycled raw material (Nylon) should not be used for making webbings.
Tender notice inviting re-tenders dated 21.8.2007 was published in the leading dailies and corrigendum was also issued on 23.8.2007. The eligibility criteria for bidders have been prescribed in the tender notice as follows:
(a) The bidder shall be a registered manufacturer having a minimum individual annual production

capacity of 100 MTs of nylon (Polyamide) nets (Double knotted Nylon webbings) in the ratio of 60% monofilament : 40% multifilament nylon nets (double knotted nylon webbings) of the specified description in the tender schedule and having experience in the production and marketing of the webbings of the specifications described in the tender document for a minimum period of three years.
(b) Alliance or agreement of any type with any manufacturer/dealer/distributor dealing with the said nylon webbings like Consortium/lease rent/joint venture etc. shall be rejected.
(c) The bidders should provide samples in a separate cover of multifilament twines and monofilament yarn for making knotted nylon webbings and also samples of the webbings of the descriptions specified in the tender document made out of the above indicated twines/yarns along with tender document.
(d) EMD has been reduced and fixed as Rs.11 lakhs.
(e) Two cover system will be followed.
(f) Production of production plan has been made mandatory.
Last date for receipt of tenders has been fixed on 6.9.2007 upto 3.00 p.m.

47. Hence, it is the case of the respondents in the counter that in view of the facts stated by the respondents as above, it reveals that there is no mala-fide or wilful intention on the part of the respondents to cancel the earlier tender and invite fresh tender as notified on 21.8.2007. There is no iota of evidence to show that the tender process is arbitrary. It is contended by the respondents in the counter that as per the procedure laid down in the Act and as per the conditions mentioned in the tender document, the respondents have taken all steps to process the tenders. There is no undue delay as contended by the petitioner in processing the tenders by the respondents, since as per the tender conditions, the samples of the technically qualified tender have got to be tested before opening the price bid. The basis for the decision of the Tender Award Committee to go in for Re-Tender based on its meeting held on 12.4.2007 is that in the absence of BIS specifications for webbings, the quality of the webbings to be supplied to the fishermen cannot be evaluated and hence, there is no mala-fide intention or delay in processing the tenders, as alleged by the petitioner. Regarding the contention that the petitioner has entered into a lease agreement with two manufacturing plants, namely M/s.Net Park and M/s.Ajanta Fish Nets, it is proved beyond doubt on investigation by the respondents that actually, the petitioner has not entered into the lease agreement with these two plants and the draft lease deed was produced for convenience to believe that it has the required production capacity of 600 MT/per annum specified in the Re-Tender, dated 25.4.2007, but actually the production capacity of the petitioner was less than 600 MT/p.a.

48. It is the further case of the respondents in the counter that the provisions of Rule 18(2) of the Tamil Nadu Transparency in Tenders Rules were duly followed. Inasmuch the Re-Tender notified on 25.4.2007 has been cancelled and the EMD was returned, the question of opening the price bid does not arise. The question of opening the price bid will arise only after the tenderers have qualified themselves for the criteria prescribed for technical bids. The contention of the petitioner that in order to accommodate the other tenderer, the reduction in production capacity was resorted to, is false, because the alleged other tenderer, namely M/s.Garware Wall Ropes Ltd., was disqualified on the ground that it lacked the required production capacity as notified in the tender. The apportioning of the quantity for the supply of nylon webbings will be decided based on the production capacity to ensure the Department to fulfil its requirement of 1100 MT of nets (webbings) and hence, the contention of the petitioner that decrease in production capacity is to accommodate the tenderers of choice, is baseless and unfounded.

49. It is further averred in the counter that the Re-Tender was floated based on the approval of the Government and the decision of the respondents was a collective one based on facts and figures and therefore, the question of favouring any one does not arise. In all fairness, it is stated by the

respondents that the principles of natural justice was applied for participation of all eligible manufacturers and that the Technical Tender Scrutinizing Committee evaluated all the bids and since it found that there was no qualified tender, the Re-Tender process was proceeded, that too after scientific examination of the technical bids and the facts brought out by the inspecting teams of officials. Thus, there is no pre-determined mind of the respondents. The writ petitioner came to Court with tainted mind and mala-fide intention to circumvent the tender process, which is intended to benefit the downtrodden Tsunami affected/already benefited fishermen. At any rate, the Writ Petitions are liable to be dismissed as devoid of merits.

50. Mr.AL.Somayaji, learned Senior Counsel appearing for the petitioner in W.P.Nos.27258 and 28485 of 2007, has vehemently contended the Government of India under Rajiv Gandhi Rehabilitation Package for Tsunami victims, has allocated Rs.110 crores under five categories, namely nets, handy rechargeable lanterns, heavy duty bicycles, life jackets and insulated ice boxes, etc., of which an amount of Rs.44 crores has been allocated for nets (webbings), that the petitioner is a reputed manufacturer of all kinds of fishing nets and has been in the trade since 1986. It is the further contention of the learned Senior Counsel that the petitioner-Company had orders with M/s.World Vision India and M/s.Salvation Arym for supply of fishing nets, having appreciated the quality of products of the petitioner-Company. Insofar as the eligibility condition, the learned Senior Counsel submitted that the manufacturer of nets (webbings) should have a production capacity of not less than 1250 MT per annum and the other condition is that the webbing and twines used should conform to BIS standard and specification. It is the further contention of the learned Senior Counsel that the Tender Award Committee constituted by the Government, has decided for Re-Tender of the nets (webbings), for supply of the same 1100 MT, even though the petitioner was having a capacity of more than 1250 MT/p.a., when the prescribed production capacity pursuant to Re-Tender has been fixed at Rs.600 MT. The decision to further lower down the capacity as 100 MT from 600 MT for the same supply of 1100 MT of total knotted webbings, cannot and could not be achieved, as the requirement is 1100 MT. Therefore, the action of the respondents is against the object and reasons contemplated under the and Tamil Nadu Transparency in Tenders Rules, 2000.

51. The learned Senior Counsel appearing for the petitioner submitted that the decision-making process as contemplated by the respondents in going for Re-Tender, is an arbitrary exercise and illegal. At any rate, the second Re-Tender violates the principles of natural justice. The learned Senior Counsel submitted further that going for second Re-Tender without even finalising the first Re-Tender in order to accommodate their own persons for supply of double knotted nylon webbings, is violative of Article 14 of the Constitution of India.

52. A paramount point has been raised by the learned Senior Counsel appearing for the petitioner-Company that calling for second Re-Tender without finalising the previous one, after opening the technical bids, reflects the pre-determined mind on the part of the third respondent in awarding the contract to a tenderer of their choice. Further, the delay in finalising the first Re-Tender amounts to defeating the social purpose of providing the relief to the Tsunami affected fishermen, for which allocation has been specifically made by the Government and the net result is that public interest would suffer and that without assigning any reason for not opening the price bids after opening the technical bids and not finalising the first Re-Tender is illegal, arbitrary and violative of Articles 14 and 19 of the Constitution of India.

53. The learned Senior Counsel has strenuously contended that upto the second Re-Tender, the requirement of the respondents is that 1100 MT nets (webbings) and they have changed the eligibility criteria from the original Tender/first and second Re-Tenders, which clearly shows the vindictive attitude on the part of the respondents in finalising the contract and therefore, the second

Re-Tender cannot be sustained and the same is liable to be set aside.

54. The following citations were relied on by the learned Senior Counsel appearing for the petitioners:
(i) AIR 2007 SC 119 (Noble Resources Ltd., vs. State of Orissa);
(ii) 1994 (6) SCC 651 (Tata Cellular vs. Union of India) and
(iii) 2001 (8) SCC 491 (Union of India vs. Dinesh Engineering Corpn.);

55. On the other hand, the learned Advocate General appearing for the respondents, submitted that on 26.12.2004, the Tamil Nadu coast has been hit by the Tsunami causing damage to the life and fishing implements of the fishermen in the entire coastal Districts of the Tamil Nadu State. The Government sanctioned various relief schemes as rehabilitation measures. About 42,000 fishermen were affected and given the relief assistance under the various Government Orders. One of the important measures taken by the Government is that orders have been issued on 22.11.2006 sanctioning a sum of Rs.110.36 crores for purchase and supply of various items, which qualify for assistance under Rajiv Gandhi Rehabilitation Package, out of which, a sum of Rs.44 crores has been allotted for purchase and supply of nets to the already benefited Tsunami affected fishermen under the above Package. The total loss of nets due to Tsunami, according to the actual assessment was 1100 MT. The learned Advocate General in his submissions, stated that the Government, after constituting the Technical Committee, Scrutinizing Committee and Award Committee for processing the tenders for the purpose of purchase of nets and according to the Committees' recommendations and the entire process of inviting tenders taking decision, and after the publication of the tender notices, the procedure as contemplated under the and the Tamil Nadu Transparency in Tenders Rules, 2000 have been scrupulously followed by the respondents. The learned Advocate General further submitted that since BIS standards and specifications were not prescribed for webbings, the technical requirements under the tender cannot be evaluated.
56. The learned Advocate General, in his submissions, stated that the original Tender and Re-Tenders are all within the powers of the Government and the procedures contemplated under the provisions of the and the Tamil Nadu Transparency in Tenders, Rules, 2000 have been followed, by taking into consideration the decisions of this Court as well as the Supreme Court and the Re-Tender process does not suffer from any legal infirmity. The submissions of the learned Advocate General are four-fold; firstly, the scope of the judicial review in matters falling under the realm of contract is limited; secondly, the power of the respondents to relax the tender conditions and to call for Re-Tender cannot be interfered with by Courts of law unless it is patently arbitrary; thirdly, the decision of the authorities to call for Re-Tender has been taken based on paramount public interest ensuring wider participation, shorter time-frame and expeditious implementation and therefore, the decision-making process by the respondents is unimpeachable in law and lastly, the cancellation of tender and the decision to call for Re-Tender does not require any opportunity to be given or reasons to be recorded, as no right accrues to any party at that stage.

57. The following are the decisions relied on by the learned Advocate General:
(i) AIR 2006 Madras 45
(M.Vasudevan vs. C.E.O., Chennai Metropolitan Development Authority);

(ii) 1993 (1) SCC 445
(Sterling Computers Ltd. vs. M & N Publications Ltd.);

(iii) 2004 (2) CTC 221 (SC)
(Directorate of Education vs. Educomp Datamatics Ltd.);

(iv) 2005 (6) SCC 138
(Master Marine Services (P) Ltd. vs.
Metcalfe & Hodgkinson (P) Ltd.);

(v) 2005 (4) SCC 435 (Global Energy Ltd. vs. Adani Exports Ltd.) and

(vi) 2006(11)SCC 548 (B.S.N.Joshi & Sons Ltd. vs. Nair Coal Services Ltd).
58. The following are the relevant paragraphs deducible from the authorities relied by either side:

(i) 2005 (4) SCC 435 (Global Energy Ltd. v. Adani Exports Ltd.,):
"9. In Tata Cellular v. Union of India (1994 (6) SCC 651 : AIR 1996 SC 11) a three-Judge Bench has explained what is a tender and what are the requisites of a valid tender. It has been held that the tender must be unconditional and must conform to the terms of the obligation and further the person by whom the tender is made must be able and willing to perform his obligations. It has been further held that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. In Air India Ltd. v. Cochin International Airport Ltd. (2000 (2) SCC 617), the same view was reiterated that the State can fix its own terms of invitation of tender and that it is not open to judicial scrutiny. Whether and in what conditions the terms of a notice inviting tenders can be a subject-matter of judicial scrutiny, has been examined in considerable detail in Directorate of Education v. Educomp Datamatics Ltd. (2000 (4) SCC 19). .... In appeal, this Court reversed the judgment of the High Court basically on the ground that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract and the Government must have a free hand in settling the terms of the tender. The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. It was further held that while exercising the power of judicial review of the terms of the tender notice, the court cannot order change in them.

10. The principle is, therefore, well settled that the terms of the invitation to tender are not open to judicial scrutiny and the courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice."

(ii) 1993 (1) SCC 445 (Sterling Computers Ltd. vs. M & N Publications Ltd):

"12. At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that

courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive.
18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to the case of Chief Constable of the North Wales Police v. Evans (1982 (3) All.E.R. 141) where it was said that: (p. 144a)
"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court."
By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, Chief Constable of the North Wales Police v. Evans (1982 (3) All.E.R. 141) the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract. But, once the procedure adopted by an authority for purpose of entering into a contract is held to be against the mandate of Article 14 of the Constitution, the courts cannot ignore such action saying that the authorities concerned must have some latitude or liberty in contractual matters and any interference by court amounts to encroachment on the exclusive right of the executive to take such decision."

(iii) 2005 (6) SCC 138 (Master Marine Services (P) Ltd. vs. Metcalfe & Hodgkinson (P) Ltd):
"11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three-Judge Bench in Tata Cellular v. Union of India (1994 (6) SCC 651 : AIR 1996 SC 11. It was observed that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (See para 85 of the Report, SCC para 70.)

12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on

the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94).

15. The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd. (2000 (2) SCC 617) and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

(iv) 1994 (6) SCC 651 (Tata Cellular v. Union of India):
"89. In G.B.Mahajan v. Jalgaon Municipal Council (1991 (3) SCC 91) the concept of reasonableness in administrative law came to be dealt with elaborately by one of us, Venkatachaliah, J. (as he then was). In paragraphs 37 to 41 the Court observed thus :
□It was urged that the basic concept of the manner of the development of the real estate and disposal of occupancy rights were vitiated by unreasonableness. It is a truism, doctrinally, that powers must be exercised reasonably. But as Prof. Wade points out :
□The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court□s function to look further into its merits. □With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority□...□
In the arguments there is some general misapprehension of the scope of the □reasonableness□ test in administrative law. By whose standards of reasonableness that a matter is to be decided? Some phrases which pass from one branch of law to another □ as did the expressions □void□ and □voidable□ from private law areas to public law situations □ carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words □reasonable□, □reasonableness□ etc. In Tiller v. Atlantic Coast Line Rail Road Co. (318 US 54 : 87 L Ed. 610 (1942), Justice Frankfurter said :
□A phrase begins life as a literary expression; its felicity leads to its lazy repetition; and repetition soon establishes it as a legal formula, undiscriminatingly used to express different and sometimes contradictory ideas.□
Different contexts in which the operation of □reasonableness□ as test of validity operates must be kept distinguished. For instance as the arguments in the present case invoke, the administrative law test of □reasonableness□ as the touchstone of validity of the impugned resolutions is different from the test of the □reasonable man□ familiar to the law of torts, whom English law figuratively identifies as the □man on the Clapham omnibus□. In the latter case the standards of the □reasonable man□, to the extent such a □reasonable man□ is court□s creation, is in a manner of saying, a mere transferred epithet. Lord Radcliffe observed : (All ER p.160)

By this time, it might seem that the parties themselves have become so far disembodied spirits that their actual persons should be allowed to rest in peace. In their place there rises the figure of the fair and reasonable man. And the spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, is, and must be, the court itself ....
(emphasis supplied) See Davis Contractors Ltd. v. Fareham U.D.C. (1956 (2) All.E.R. 145, 160 : 1956 AC 696 : (1956) 3 WLR 37).
Yet another area of reasonableness which must be distinguished is the constitutional standards of reasonableness of the restrictions on the fundamental rights of which the court of judicial review is the arbiter.
The administrative law test of reasonableness is not by the standards of the reasonable man of the torts law. Prof. Wade says :
This is not therefore the standard of the man on the Clapham omnibus . It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called Wednesbury unreasonableness, after the now famous case in which Lord Greene, M.R. expounded it.
(emphasis supplied)

90. Referring to the doctrine of unreasonableness, Prof.Wade says in Administrative Law (supra) :
The point to note is that a thing is not unreasonable in the legal sense merely because the court thinks it is unwise.

91. In Food Corpn. of India v. Kamdhenu Cattle Feed Industries (1993 (1) SCC 71) it was observed thus : (SCC p.76, para 7)
In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fairplay in action.

92. In Sterling Computers Limited v. M&N Publications Ltd. (1993 (1) SCC 445) this Court observed thus : (SCC p.455, para 12)
In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of play in the joints to the executive.
93. In Union of India v. Hindustan Development Corpn. (1993 (3) SCC 499) this Court held thus : (SCC p.515, para 9)
... the Government had the right to either accept or reject the lowest offer but that of course, if done on a policy, should be on some rational and reasonable grounds. In Erusian Equipment & Chemicals Ltd. v. State of W.B. (1975 (1) SCC 70 : 1975 (2) SCR 674) this Court observed as under :

(SCC p.75, para 17)
"When the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions". The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." "

94. The principles deducible from the above are :
(1) The modern trend points to judicial restraint in administrative action.
(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.
Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

151. In the above two cases, we are obliged to interfere on the ground of arbitrariness and violation of the principle of natural justice confining ourselves to the doctrine of judicial restraint, however, by the application of permissible parameters to set right the decision-making process. (emphasis supplied). "

(v) 2001 (8) SCC 491 (Union of India vs. Dinesh Engineering Corpn.):
"15. Coming to the second question involved in these appeals, namely, the rejection of the tender of the writ petitioner, it was argued on behalf of the appellants that the Railways under clause 16 of the Guidelines was entitled to reject any tender offer without assigning any reasons and it also has the power to accept or not to accept the lowest offer. We do not dispute this power provided the same is exercised within the realm of the object for which this clause is incorporated. This does not give an arbitrary power to the Railways to reject the bid offered by a party merely because it has that power. This is a power which can be exercised on the existence of certain conditions which in the opinion of the Railways are not in the interest of the Railways to accept the offer. No such ground has been taken when the writ petitioner's tender was rejected. Therefore, we agree with the High Court that it is not open to the Railways to rely upon this clause in the Guidelines to reject any or every offer that may be made by the writ petitioner while responding to a tender that may be called for supply of spare parts by the Railways. Mr.Iyer, learned Senior Counsel appearing for EDC drew our attention to a judgment of this Court in Sterling Computers Ltd. v. M & N Publications Ltd. (1993 (1) SCC 445) which has held: (SCC p.455, para 12)

"Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision

as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of □play in the joints□ to the executive.□

16. But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law, especially Article 14 of the Constitution. In the instant case, we have noticed that apart from rejecting the offer of the writ petitioner arbitrarily, the writ petitioner has now been virtually debarred from competing with EDC in the supply of spare parts to be used in the governors by the Railways, ever since the year 1992, and during all this while, we are told the Railways are making purchases without any tender on a proprietary basis only from EDC which, in our opinion, is in flagrant violation of the constitutional mandate of Article 14. We are also of the opinion that the so-called policy of the Board creating monopoly of EDC suffers from the vice of non-application of mind, hence, it has to be quashed as has been done by the High Court."

(vi) 2006 (11) SCC 548 (B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd:
69. ..... Whether an employer has power of relaxation must be found out not only from the terms of the notice inviting tender but also the general practice prevailing in India. For the said purpose, the court may consider the practice prevailing in the past. Keeping in view a particular object, if in effect and substance it is found that the offer made by one of the bidders substantially satisfies the requirements of the conditions of notice inviting tender, the employer may be said to have a general power of relaxation in that behalf. Once such a power is exercised, one of the questions which would arise for consideration by the superior courts would be as to whether exercise of such power was fair, reasonable and bona fide. If the answer thereto is not in the negative, save and except for sufficient and cogent reasons, the writ courts would be well advised to refrain themselves in exercise of their discretionary jurisdiction."

(vii) AIR 2006 Madras 45 (M.Vasudevan vs. C.E.O., Chennai Metropolitan Devpt. Authority):
"8. Learned counsel for the petitioner/appellant then submitted that the eligibility requirement has been relaxed by the first respondent just to suit the third respondent. In this connection we asked the learned senior counsel whether there were any rules prescribing the eligibility qualification and he informed us that there appeared to be none. In the absence of any rules it is open to the authorities to change the eligibility requirements and this Court cannot interfere in this connection. In Sterling Computers Ltd. v. M & N Publications Ltd. [(1993) 1 SCC 445 : AIR 1996 SC 51] it was held by the Supreme Court vide paragraph 12 as follows:

"Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of 'play in the joints' to the executive."

9. In this case the first respondent on a consideration of the overall situation decided to relax the

eligibility requirements, and in our opinion it cannot be said that it did not act bona fide in this connection.

10. It must be understood that the contract in question was not a contract for some highly specialised work such as setting up a highly technical factory or establishment. It was only a contract for collection of parking fee which cannot be said to be a very highly specialised work. Hence in this situation the eligibility requirement can certainly be relaxed as it would not have much effect on the contract involved.

11. At any event it is not for this Court to interfere in such administrative decisions and the Court must exercise judicial restraint as held in a Division Bench decision of this Court in Rama Muthuramalingam v. The Deputy Superintendent of Police, Mannargudi (2004 (5) CTC 554 : AIR 2005 Madras 1). "

(viii) AIR 2007 SC 119 (Noble Resources Ltd. vs. State of Orissa):
"15. It is trite that if an action on the part of the State is violative the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on its part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter."

59. I have given my careful consideration to the submissions made by the learned counsel on either side and also given due consideration to the various rulings of the Supreme Court and this Court and the provisions of the and the Tamil Nadu Transparency in Tenders Rules, 2000. I have also perused the materials and the records placed before this Court.

60. It is seen that the first Tender Document which contains the "description of works", dated 21.12.2006 (hereinafter referred to as 'the first tender') issued by the Government of Tamil Nadu, Fisheries Department, provided as follows:
"For and on behalf of the Governor of Tamil Nadu, sealed tenders are invited by the Special Commissioner of Fisheries, Government of Tamil Nadu, Administrative Office Buildings, Teynampet, Chennai 6 ONLY FROM THE MANUFACTURES OF NETS (WEBBINGS) WITH A PRODUCTION CAPACITY OF NOT LESS THAN 1250 METRIC TONNES PER ANNUM for the description of works specified hereunder and as per the specifications, terms and conditions mentioned in this tender document.
Description of works

FOR THE SUPPLY OF 1100 METRIC TONNES OF KNOTTED GILL NETS (ONLY WEBBINGS) APPROVED BY BIS WITH THE FOLLOWING SPECIFICATIONS:

S.No.
Type of Material
Twine size
Stretched Mesh size in mm
1
Nylon Multifilament

210/1/2
30
2
Nylon Monofilament
0.16 mm dia
27
3
Nylon Monofilament
0.16 mm dia
36
4
Nylon Multifilament
210/1/2
36
5
Nylon Monofilament
0.23 mm dia
56
6
Nylon Multifilament
210/1/3
56
Other conditions:-
Webbings and Twines used should be of BIS Standards and specifications."

61. Again, the Government of Tamil Nadu, Department of Fisheries issued a Tender Document which contains the "description of works", dated 25.4.2007 (hereinafter referred to as 'the first re-tender') provided as follows:
"For and on behalf of the Governor of Tamil Nadu, sealed tenders are invited by the Director of Fisheries, Government of Tamil Nadu, Administrative Office Buildings, Teynampet, Chennai 6 ONLY FROM THE MANUFACTURES OF NYLON WEBBINGS WITH A PRODUCTION CAPACITY OF NOT LESS THAN 600 METRIC TONNES PER ANNUM for the description of works specified hereunder and as per the specifications, terms and conditions mentioned in this tender document.
Description of works
FOR THE SUPPLY OF 1100 METRIC TONNES OF KNOTTED NYLON WEBBINGS AS PER THE FOLLOWING SPECIFICATIONS:
S.No.
Type of Material
Twine size
Stretched Mesh size in mm
1
Nylon Multifilament
210 d x 1 x 2
30
2
Nylon Monofilament
0.16 mm dia
27
3
Nylon Monofilament
0.16 mm dia

36
4
Nylon Multifilament
210 d x 1 x 2
36
5
Nylon Monofilament
0.23 mm dia
56
6
Nylon Multifilament
210 d x 1 x 3
56
1. Nylon webbings should be made up of Nylon twines/monofilament yarn of BIS specifications (i.e)
Nylon Multifilament (Twine) : IS 4401 : 2006
Nylon Monofilament : IS 7533 : 2003
2. The webbing should be made up of virgin Polyamide (Nylon) twine/yarn.

3. Recycled raw material (Nylon) should not be used for making webbings."
62. Once again, the Government of Tamil Nadu, Department of Fisheries issued a Tender Notice which contains the "description of works", dated 21.8.2007 (hereinafter referred to as 'the second re-tender') provided as follows:
"For and on behalf of the Governor of Tamil Nadu, sealed tenders are invited for the supply of 1100 MTS of double knotted nylon nets (webbings) from the manufacturers only under Fixed Rate Contract System by the Director of Fisheries, Chennai-6."

63. The above said tenders were meant for supply of 1100 MT double knotted nets (webbings) only to the already benefited Tsunami affected fishermen of the Tamil Nadu showing the place of execution as 13 coastal Districts of Tamil Nadu. All the above said three tender notifications contained two parts, namely (i) the technical bids and (ii) price bid.

64. It is to be noted that the eligibility criteria for the bidders providing a condition in the second re-tender dated 21.8.2007 provides the following conditions:
"a) The bidder shall be a registered manufacturer having a minimum individual annual production capacity of 100 MTs of nylon (Polyamide) nets (Double knotted Nylon webbings) in the ratio of 60% monofilament : 40% multifilament nylon nets (Double knotted Nylon webbings) of the specified description in the tender schedule and having experience in the production and marketing of the webbings of the specifications described in the tender document for a minimum period of 3 years.
b) Alliance of agreement of any type with any manufacturer / dealer / distributor dealing with the said nylon webbings like Consortium / lease / rent / joint venture etc. shall be rejected.
c) The bidders should provide samples in a separate cover of multifilament twines and monfilament yarn for making knotted nylon webbings and also samples of the webbings of the descriptions specified in the tender document made out of the above indicated twines / yarns along with tender document."

65. Admittedly, the coastal Tamil Nadu was hit by Tsunami on 26.12.2004, which caused havoc to the life and fishing implements of the fishermen in the entire coastal Districts. As the damage caused is heavy, the Government has taken various rehabilitation measures to the fishermen for repairing their nets for rejuvenating their lost fishing implements. It is also to be seen that about 42,000 fishermen were given the relief assistance sanctioned under various Government Orders. The Government of Tamil Nadu, in G.O.Ms.No.193, Animal Husbandry, Dairying and Fisheries

Department, dated 22.11.2006, has sanctioned a sum of Rs.110.36 crores for purchase and supply of the following, to the already benefited Tsunami affected fishermen, which qualify for assistance under "Rajiv Gandhi Rehabilitation Package":

(i) Nets (webbings) 1100 MTs
(ii) Handy rechargeable lantern.
(ii) Heavy duty bicycles.
(iii) Life jackets.
(iv) Insulated ice boxes.

A sum of Rs.44 crores out of the total sanction of Rs.110.36 corres, has been allocated for the supply of nets (webbings) to the already benefited Tsunami affected fishermen under the above said Rajiv Gandhi Rehabilitation Package. The total loss of nets, due to Tsunami, was actually assessed as 1100 MTs. Therefore, the Government has proposed to purchase and supply 25 Kgs. of Gill Nets worth about Rs.10,000/- to each beneficiary. Accordingly, the Government in G.O.Ms.No.193, Animal Husbandry, Dairying and Fisheries Department, dated 22.11.2006, issued orders constituting three Committees, namely (i) Technical Committee, (ii) Scrutinizing Committee and (iii) Award Committee, which comprised of the following officials, as seen from Annexure-II to the G.O:

1. TECHNICAL COMMITTEE:

(a) Net

1. The Special Commissioner, Chairman of the Committee.
2. Director or his representative from CIFNET
3. Zonal Director or his representative of FSI, Chennai.
4. Joint Director (Marine)-Member Secretary.

(b) Ice Box

1. The Special Commissioner, Chairman of the Committee.
2. Director or his representative from MPEDA.
3. Director or his representative from CIFT, Cochin.
4. Director, South Indian Fisheries Federation Society, Trivandrum.
5. Joint Director (Marine)-Member Secretary.

(c) Rechargeable Lantern

1. The Special Commissioner, Chairman of the Committee.
2. Director or his representative of TNMB
3. Representative from ELCOT
4. Director or his representative of Mercantile Marine Department

5. Joint Director (Marine)-Member Secretary.

(d) Heavy Duty Bicycles

1. The Special Commissioner, Chairman of the Committee.

2. Director or his representative from the Department of Adi Dravida Welfare.

3. Director or his representative from Department of Industries and Commerce.

4. Joint Director (Marine)-Member Secretary.

(e) Life Jacket:

1. The Special Commissioner, Chairman of the Committee.

2. Director or his representative from CIFNET.

3. Director or his representative of Mercantile Marine Department.
4. Joint Director (Marine)-Member Secretary.

2. SCRUTINIZING COMMITTEE:

1. The Special Commissioner, Chairman of the Committee.

2. Joint Directors (Marine, Inland and Research).
3. A.O. of Fisheries Department.
4. Deputy Director (Marine)-Member Secretary.

3. AWARD COMMITTEE:
1. Special Commissioner of Fisheries, Chairman
2. Secretary to Government, Animal Husbandry, Dairying and Fisheries Department.

3. Secretary to Government or his/her nominee, Finance Department.
66. There is no dispute about the procedure in the publication of the tender documents/notifications as contemplated under the and the Tamil Nadu Transparency in Tenders Rules, 2000. It is also not in dispute that there were three tender notifications, initially, inviting tender dated 21.12.2006 from the manufacturers of webbings with a production capacity of 1250 MTs per annum, thereafter, with 600 MT per annum as per the first re-tender dated 25.4.2007, and thereafter by second re-tender dated 21.8.2007 having a minimum individual annual production capacity of 100 MTs. The assessment and the testings were as per the Committees' recommendations, which are stated to have been done scrupulously and the samples were received from the CIPET and the tenders were evaluated by the Scrutinizing Committee. The manufacturing plant of the petitioner-Garware Wall Ropes Ltd., was inspected on 7.2.2007. The Committee recommended to conduct the "breaking load test" of the samples as per the specification by the CIPET and the test report on breaking load was received from CIPET in respect of the petitioner-Garware Wall Ropes Ltd. on 23.3.2007 and the same was evaluated by the Tender Scrutinizing Committee on 3.4.2007. It is also seen that based on the recommendations of the Committee, the price bid of the technically qualified tenderer was opened on 4.4.2007 and negotiation of rates was done with the tenderer on 10.4.2007. As per the recommendations of the Tender Scrutinizing Committee, technical bids and price bids were placed before the Tender Award Committee in its meeting held on 12.4.2007 and the Tender Award Committee took note of the information given by the scientists (experts) from CIFT, Cochin and CIPET, Chennai, stating that there were no BIS specification for webbings, unlike twines. However, the BIS test procedure is available for both webbings and twines and since the BIS specifications were not prescribed for webbings, the technical requirements under this tender cannot be evaluated. Therefore, the Award Committee recommended to go in for re-tender and the tender dated 21.12.2006 was cancelled.
67. The first re-tender was called on 25.4.2007. In the first re-tender, the supply was restricted to 1100 MT of knotted nylon webbings, from the manufacturers of nets (webbings) with a production capacity of not less than 600 MT per annum and the nylon webbings should be made up of Nylon twines/monofilament yarn of BIS specification, namely Nylon Multifilament (Twine) : IS 4401 : 2006 and Nylon Monofilament : IS 7533:2003. In this first re-tender, the Tender Scrutinizing Committee recommended to fix the production capacity as 600 MTs/annum in view of the fact that only one responsive bid was received for the first tender in which the production capacity was fixed as 1250 MTs/annum, considering the uniqueness of the purchase in terms of volume which needs to be supplied within one year. Accordingly, the re-tenders were published in the leading dailies on

25.4.2007.

68. It is to be stated that in the above said first re-tender dated 25.4.2007 the procedural aspects are not all disputed by the parties, as the same were contemplated by the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000.

69. Totally, three tenders were received from the petitioners herein, namely M/s.Garware Wall Ropes Pvt. Ltd., Pune (petitioner in W.P.No.28827 of 2007) and M/s.Kassim Nets, Nagercoil (petitioner in W.P.Nos.27258 and 28485 of 2007), apart from one M/s.Kumaran Fish Nets Private Ltd., Nagercoil, which has not come before this Court. The manufacturing plants of M/s.Kassim Nets, Nagercoil and M/s.Kumaran Nets, Nagercoil were inspected on 2.6.2007 and 22.6.2007 respectively. The samples which were sent to CIFT, Cochin were confirmed on 11.7.2007 for the BIS specifications.

70. In the meanwhile, a complaint was received questioning the production capacity of the writ petitioner-M/s.Garware Wall Ropes Pvt. Ltd. A team of officials were deputed by the Tender Scrutinizing Committee to assess the veracity of the complaint and the plant of M/s.Garware Wall Ropes Pvt. Ltd. was re-inspected, and the said team found that the petitioner-M/s.Garware Wall Ropes Pvt. Ltd. did not possess the capacity stated in the first re-tender document dated 25.4.2007, namely the production capacity of not less than 600 MT/p.a. Thereafter, it is seen that the Scrutinizing Committee has evaluated the technical bids, inspection reports of all the tenderers and the test reports on the samples and since no one was found qualified in evaluation process by the Tender Scrutinizing Committee, the tenders of all the three tenderers including the petitioner-M/s.Garware Wall Ropes Pvt. Ltd. were rejected.

71. It is further seen that on that background, the Tender Scrutinizing Committee, in its meeting held on 9.8.2007, has made certain recommendations, namely that, by experience in the previous two tenders, there were no suitable suppliers even after the reduced production quantity of 600 Mts/year as eligibility criteria; 1100 MTs. of nylon webbings have to be distributed to the fishermen within a timeframe of one year; to ensure better participation in tender and going by the previous experience, that there is no suitable manufacturer with the production capacity of 1250 MT/annum and 600 MT/annum, the production capacity may be reduced to 100 MT/annum and that the Government may be addressed to permit the third respondent-Director of Fisheries to go for re-tender under Fixed Rate Contract System and to reduce the production capacity to 100 MTs/annum (60% monofilament : 40% multifilament) of webbings of specified description in the tender and also to reduce the time limit to 15 days for inviting tenders, since the tender call is for the third time and all the manufacturers were aware of the supply of webbings to the "already benefited Tsunami affected fishermen". Hence, the second re-tender stood cancelled on 17.8.2007 and the EMDs were returned.

72. The various conditions as seen from the earlier tenders (tender dated 21.12.2006 and the first re-tender dated 25.4.2007) and the experience as well as the requirement and the time period, have all been taken into account. Therefore, the respondents have proceeded to call for the second re-tender dated 21.8.2007 with due publication in the dailies and hereagain, the procedural aspects are not in dispute.

73. The second re-tender dated 21.8.2007 prescribed certain specific eligibility criteria, taking note of the earlier experience with the technical bids, inspection report as well as the test reports and they prescribed certain conditions, namely that (i) the bidder shall be a registered manufacturer having a minimum individual annual production capacity of 100 MTs of nylon (Polyamide) nets

(Double knotted Nylon webbings) of the specified description in the tender schedule and having experience in the production and marketing of the webbings of the specifications described in the tender document for a minimum period of three years; (ii) alliance of agreement of any type with any manufacturer/dealer/distributor dealing with the said nylon webbings like consortium/lease/rent/joint venture etc. shall be rejected and (iii) the bidders should provide samples in a separate cover of multifilament twines and monofilament yarn for making knotted nylon webbings and also samples of the webbings of the descriptions specified in the tender document made out of the above indicated twines/yarn along with tender document.

74. The above reasonings were based on the previous bitter experience with the tenderers/manufacturers, the required annual production capacity, which emanated the respondents to go in for re-tenders or not. Logical conclusions have been arrived at by the respondents and this Court has to iron out the creases in the said conclusion as to whether there is any arbitrariness or mala-fide exercise or the tender process is actuated by any malice and this Court has to further delve upon as to whether the re-tender was necessitated only due to the ineligibility of the tenderers, it is only inevitable to achieve the Government's object to give benefit to the mass-affected fishermen of the coastal Districts of the Tamil Nadu under the national calamity/havoc Tsunami. The capacity of the petitioner-M/s.Garware Wall Ropes Ltd., is not as per the requirement of the tender document. It is still worse the case of the petitioner-Kassim Nets that they did even come nearer to the requirement of the tender document. The respondents have taken an inexorable decision to go in for second re-tender, taking into consideration the information placed before the Committees.

75. Since there was a complaint against the petitioner-M/s.Garware Wall Ropes Ltd., a team of three officials, namely DRO, GM from TNFDC, a head of the fish net manufacturing plant and Technician working in the fish net manufacturing plant of TNFDC, inspected the plant of the petitioner-M/s.Garware Wall Ropes Ltd. Though the petitioner-M/s.Garware Wall Ropes Ltd. claimed that it had 110 machines in the big factory at Wai, it had only shown 15 machines from which the webbings for the specified descriptions in the tender can be produced.

76. In the case of Kassim Nets, it is seen that the production capacity as submitted in its tender document is only 420 MT per annum. To meet the tender requirement of 1250 MT production capacity of webbings, the petitioner has entered into a consortium type of agreement with 15 other manufacturers from Tamil Nadu Nadu and Karnataka and showed that as consortium as the combined production capacity as 4,524 MT per annum which is against the tender conditions. Since there are no BIS specifications for webbings, the Tender Award Committee has decided to go in for retenders in its meeting held on 12.04.2007. Further, it is seen that the petitioner's averment in the affidavit that it is having the required production capacity of 1250 MT per annum on its own, is wrong and the petitioner has given a statement contrary to the consortium type of agreement with 15 other manufacturers and therefore, the production capacity has been shown wrongly only for the purpose of this writ petition. Therefore, in the absence of such production capacity of its own as per the requirement of the tender notification, it has no valid ground to contest the matter. Further, in the re-tender notification dated 25.04.2007 the production capacity has been reduced to 600 MT per annum was arrived based on the previous experience and only one responsive bid was received in the first tender call and after detailed discussions to ensure quick and quality procurement of nets (webbings) and more responsive participation and competitive rates, the respondent has decided to go for re-tender. Also, as per the evaluation of technical bid and to confirm the veracity of the details furnished in the document, physical inspection of the plants of the tenderers was made. It was from the documentary evidence the petitioner has produced in support of his claim that it has taken two net manufacturing plants, viz., Net Park and Ajanta Fish Nets on lease. Also, according to the

respondent, certain discrepancies were found in the documentary evidence which led to inspection of the plant to ascertain whether lease has been effectively entered into. During inspection of the plant on 02.06.2007, the petitioner did not produce any documentary evidence before the inspection team to show that it has really entered into lease agreement which will be effective from 1st April 2007 onwards with other two companies. One more important aspect of the matter is that one of the lessees i.e. Ajanta Fish Nets is functioning in the SIDCO Industrial Estate at Nagercoil and hence, a report from the General Manager, SIDCO, Nagercoil was obtained to ascertain whether the above firm has really been taken on lease by the petitioner. The General Manager, SIDCO informed that the firm is still run as a proprietary unit by one Thangaraj, the real owner. Therefore, the respondent has come to the conclusion that the petitioner has not entered into lease agreement with the above firm but the draft lease deed produced by it is only for convenience sake and to make the respondent believe that he has the required production capacity of 600 Mts per annum specified in the tender document of the re-tender call dated 25.04.2007.

77. It is further seen that during the first inspection of the petitioner plant, it did not produce the documents for taking lease of the plants. But, during second inspection on 08.06.2007 which was based on its request, it has produced some documents to show that it has paid the lease rent, etc. to the lessee. But, on verification of the documents, it was found that they have been fabricated to mislead the respondent. Refundable deposit and monthly lease rent have not been paid in order to have the lease come into effect as per the terms of reference in the lease deed. Since the lease of two other net manufacturing firms has not come into force during the time of submission of re-tender, it is clear that the petitioner's claim for average production capacity of 1044 MT per annum is not at all based on any valid document Therefore, the respondent has concluded that the petitioner is not having the required production capacity as per the tender notification. The reported lease agreement was done only for the sake of convenience and self-serving for arriving at the required production capacity of 600 MT per annum and this conclusion of the respondent appears to be reasonable particularly in the absence of required production capacity and the petitioner has, in no way, convinced on the aspect of specification of the required tender conditions. Therefore, looked at from any angle, I am of the considered view that the petitioner's claim and the challenge made therein are not at all based on the proper claim made by the petitioner. Accordingly, in the absence of required production capacity with proper quality and standard and on evaluation of the technical bid as per the criteria, the respondent has come to the conclusion that the petitioner has not fulfilled the tender specification and this stand taken by the respondent for re-tender based on recommendations of the Committee, keeping in mind the need for quick and immediate supply of fishing nets, is in no way infirmed.
78. Thus, it can be seen that neither the petitioner-M/s.Garware Wall Ropes Ltd. nor the petitioner-Kassim Nets was proved eligible tenderers with the required annual capacity. It is evident that a decision has been arrived at as per the expert Committee's opinion exclusively constituted for the purpose of exploring the possibility of getting an 'outstanding tenderer' for the 'already benefited Tsunami affected' fishermen.

79. The decision of the authorities to call for the re-tender(s) is based on the paramount public interest which prevails among other things being equal, and to ensure wider participation by the tenderers. The object sought to be achieved for supply of the fishing implements, particularly the webbings to the Tsunami affected fishermen, the expeditious implementation of the rehabilitation measures, besides the production capacity with proper mesh size being indicated, etc., have all been re-silted by the experts in their sample analysis. As there is no material reasons actuated by malice or any mala-fide intention to gain out of the rehabilitation measure(s) for the social cause and when the petitioners do not possess the required capacity of production, the reasons for taking such a re-course of re-tender, cannot be found fault with, as there is 'great and greater public interest' involved in the tender process for the Tsunami affected fishermen. The democratic Government

being a public-oriented agency, in all fairness, took into consideration the various aspects in a transparent manner, to achieve its avowed object of implementation of supply of fishing nets to the Tsunami affected fishermen and this is the omnipotent reason for the Government to go in for a better participation of the tenderers with BIS specifications, by calling for re-tender(s). Thus, it is evident from the foregoing that there is no arbitrariness in the re-tender(s) process.

80. I have given my anxious and careful consideration to the various decisions relied on by either side and the principles enunciated therein.

81. It is relevant to note that the respondents have scrupulously followed the provisions of the with the Tamil Nadu Transparency in Tenders Rules, 2000, in particular, Rule 27 relating to the process of tender evaluation to be confidential until the award of the contract is notified.

JUDICIAL REVIEW/RESTRAINT:
82. To examine the principle laid down by the Supreme Court in Tata Cellular case and the scope of judicial review/restraint, the underlying principles are:
(i) The administrative action of the respondents in this case cannot be interfered with by this Court in view of the modern trend points to judicial restraint, as this Court is not sitting as a Court of appeal but merely, reviews the manner in which the decision was made.

(ii) The Court does not have the expertise to correct the administrative decision and if a review of the administrative decision is permitted, it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(iii) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

(iv) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness, but must be free from arbitrariness not affected by bias or actuated by mala-fides.

(v) By way of judicial review, the Courts cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry.

83. While applying the above principles, it is seen that in the absence of any arbitrariness not affected by bias or actuated by mala-fides, and when there is no material placed before this Court to establish that there is arbitrariness, the decision-making process appears to be proper, besides the same being in conformity with the law laid down by this Court and the Apex Court. Taking note of the fact that if any decision at this stage will cause heavy administrative burden on the Government exchequer and leads to increased and unbudgeted expenditure, the tender notifications cannot be quashed at this re-tender stage. In the circumstances, taking note of the rehabilitation from Tsunami affected in the coastal areas of the State of Tamil Nadu and the object sought to be achieved at the earliest, which cannot be stalled by any mala-fide approach of the petitioners and if any such action is permitted, it will definitely impose heavy administrative burden not only on the Government, but also deprive the very benefit of the scheme to reach the Tsunami affected fishermen, which is a natural calamity in the world, which has to be rehabilitated as fast as the thunder-lights reach the earth soon, which in this case, admittedly, has been belated for one reason or the other at the

instance of one party or the other.

84. Therefore, I do not find any arbitrariness or unreasonableness or any material actuated by malice. I have also perused the various decisions of the Supreme Court and considering the judicial restraint in the matter, I have no reason to interfere with the public contract, that too which is at the nascent stage. The scope of judicial review being very limited under Article 226 of the Constitution of India.

85. Power of relaxation:
(i) The Supreme Court has cautioned that only in rarest of rare cases, that too when there is mala-fide on the face of it, then and then only the exercise of power under Article 226 can be made. In the absence of any mala-fide being complained of by the petitioners, I do not propose to relax the tender conditions, as the invitation to tender is in the realm of contract, especially when the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 have been followed with proper perspective and the respondents have acted as "beacon light" to wipe out the obstacles of the fishermen in getting their nets twined, who suffer even for a one-square meal a day for eking out their livelihood.

(ii) As stated by the Supreme Court in its judgment reported in 2006 (11) SCC 548 (B.S.N.Joshi & Sons Ltd. vs. Nair Coal Services Ltd.), whether an employer has power of relaxation must be found out not only from the terms of the notice inviting tenders, but also the general practice prevailing in India. For the said purpose, the Court may consider the practice prevailing in the past and keeping in view a particular object, if in effect and substance, it is found that the offer made by one of the bidders substantially satisfies the requirements of the conditions of notice inviting the tender, the employer may be said to have a general power of relaxation in that behalf and when once such power was fair, reasonable and bona-fide, and if the answer thereto is not in the negative, save and except for sufficient and cogent reasons, the Writ Courts would be well advised to refrain themselves in exercise of their discretionary jurisdiction. It is seen that the offer made by one of the better specialised conditions of notice inviting tenders and keeping in view the object sought to be achieved effectively and in substance, it is found that the offer made by the parties is based upon the requirement of the production capacity per annum, as stated in the impugned tender notifications, the power of relaxation is available with the Government, which is at liberty to issue re-tender according to the whims and fancies of the needs of the 'already benefited Tsunami affected fishermen' who expect the implementation of the G.O. Furthermore, there is no arbitrary exercise of power by the respondents, in relaxing the production capacity from 1250 to 100 MT per annum.

86. Articles 14/19 of the Constitution:
(i) It is not the case of the petitioners that they have been discriminated against or there is any violation of principles of natural justice enshrined under Articles 14 and 19 of the Constitution of India. From the inception of original tender dated 22.11.2006 till the stage of second re-tender dated 21.8.2007, it appears that there was initially one person, with the subsequent tenderers following suit, and all of them were taken into consideration. There has also been a wider participation and the respondents have acted in an impartial and unbiased manner.

(ii) There is no power of this Court to act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract. But, once the procedure adopted by an authority for purpose of entering into a contract is held to be against the mandate of Article 14 of the Constitution, the Courts cannot ignore such action saying that the authorities concerned must have some latitude or liberty in contractual matters and any interference by Court amounts to

encroachment on the exclusive right of the executive to take such decision.

87. Decision-making process:
The decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. Normally, while exercising the power of judicial review, in respect of the Government contracts entered into for and on behalf of the State, primarily, it has to be seen as to whether there has been any infirmity in "the decision-making process". The Courts can certainly examine whether "decision-making process" is reasonable, rational, arbitrary and violative of the principles of law. In this case, in my view, the "decision-making process" has been properly exercised after taking note of the recommendations of several committees, with great caution, keeping in mind the fulfilment of the rehabilitation measures of the Government both at the Centre and the State.

88. Public interest:

Taking note of the public interest as well as the Government's rehabilitation scheme which aims to implement the same faster for getting proper purchase of the materials and supply to the needy fishermen and considering the object of the Government, the respondents have given due consideration for wider participation of the tenderes and are ensuring to get the things done at the earliest by getting quality fishing nets with BIS specifications mentioned in the tender schedules and hence, they reduced the production capacity by three tender processes within a period of three years and if the manufacturers are in a position to supply quality nets, the same shall reach the "already benefited Tsunami affected fishermen" expeditiously.

89. The principles laid down by the Supreme Court in Sterling Computers case, Tata Cellular case, Global Energy case and B.S.N. Joshi & Sons case are all guiding factors while deciding a contract of this nature and in the matter of judicial scrutiny, the power of relaxation and the scope of interference in the Government contract has been carefully analysed in these judgments and I have given due consideration to the same.

90. In view of what has been stated above, keeping in mind, the paramount public interest and taking note of the natural calamity which devastated the coastal district of Tamil Nadu hit by Tsunami and thousands of fishermen have been affected. Therefore, the State of Tamil Nadu has taken as a rehabilitation measure to provide benefits to the Tsunami-affected fishermen by providing fishing nets and other implements for which they have now invited and processed tender documents. Two of its earlier tender processes have given some experience and they have analysed the quality and standard of fishing nets (webbings) and the required production capacity within the time limit stipulated in order to give speedy relief measures and therefore, they have taken a decision based on the Committee's recommendations and analysed the pros and cons of the importance of the measures to the Tsunami affected fishermen and accordingly, a decision has been arrived at and concluded to go for a re-tender process with a required production capacity, specification and quality. In the absence of any arbitrariness or mala fides and when the decision especially in the matter of the power of the respondent to relax which is not actuated with malice and when there is no discrimination and the terms of invitation to tender cannot be open to judicial scrutiny since the invitation to tender is in the realm of contract and the Government must have freedom in matters such as this and the decision of the Government must be tested not only by the Wednesbury principle of reasonableness but also should be free from arbitrariness not affected by bias or actuated by mala fides, this Court is not all inclined to interfere in the tender process when the decision-making process was in accordance with the various analysis and recommendations by the two Committees constituted by the Government. Therefore, I have no reason to interfere with their decision especially under Article 226 of the Constitution of India and there is no merit consideration

to quash the impugned tender notification which may impose heavy burden on the administration and may lead to increased and un-budgeted expenditure to the Government besides making the Tsunami affected fishermen languish for yet another indefinite period to get their due relief and the rehabilitation measures may be defeated in case if this Court is inclined to interfere with the impugned tender notification.

In fine, there being no merit, the Writ Petitions which deserve no consideration are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.10.2007

Index: Yes / no
Internet: Yes /no
cs

V. DHANAPALAN, J.

After the judgment was pronounced, the learned counsel for the petitioners submitted that in view of the decision of this Court, the petitioners may not be in a position to participate in the re-tender. In view of this submission, the petitioners are permitted to apply for re-tender and the respondents are directed to issue tender schedules to the petitioners.

12.10.2007

V. DHANAPALAN, J.
cs
Copy to
1. The State of Tamil Nadu
Rep. by Secretary to Government,
Department of Fisheries,
Fort St.George, Chennai-600 009.

2. The Special Commissioner of Fisheries,
Teynampet, Chennai-600 006.

3. The Director of Fisheries,
Administrative Office Building,
Teynampet, Chennai-600 006.

Pre-delivery Order in
W.P.Nos.27258, 28827 and
28485 of 2007

12.10.2007